Laws, Memorials, and Resolutions

OF THE

TERRITORY OF MONTANA,

PASSED AT THE

EIGHTH REGULAR SESSION

OF THE

LEGISLATIVE ASSEMBLY,

HELD AT THE CITY OF VIRGINIA, THE CAPITAL OF SAID TERRITORY,
COMMENCING JANUARY 5TH, A. D. 1874, AND ENDING
FEBRUARY 13TH, A. D. 1874.

TO WHICH ARE PREFIXED

THE CONSTITUTION OF THE UNITED STATES, AND THE ORGANIC ACT AND AMENDMENTS THERETO OF THE TERRITORY.

PUBLISHED BY AUTHORITY.

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CERTIFICATE OF AUTHENTICATION.

TERRITORY OF MONTANA, } ss:
SECRETARY'S OFFICE, }

I, JAMES E. CALLAWAY, Secretary of the territory of Montana, do hereby certify that the printed laws, joint memorials, and joint resolutions contained in this volume are true, correct, and full copies of all the enrolled laws, joint memorials, and joint resolutions that were passed at the eighth regular session of the legislative assembly of said territory, begun and held at the city of Virginia, the capital of said territory, on the 5th day of January, A. D. 1874, and ending on the 13th day of February, A. D. 1874, with the exceptions of corrections in orthography and punctuation, and omissions inserted in brackets.

In Testimony Whereof, I have hereunto set my hand and affixed the [L. S.] great seal of said territory Done at the city of Virginia, the capital of said territory of Montana, this 4th day of May, A. D. 1874.

J. E. CALLAWAY, *Secretary.*

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ERRATA.

Page 42, Sec. 3, line 5, for "setting" read "sitting."
Page 53, Sec. 14, line 16, for "time" read "term."
Page 53, Sec. 15, line 3, for "time" read "term."
Page 56, Sec. 48, line 7, for "to" read "of."
Page 71, Sec. 1, next last line, for "authentic" read "authenticated."
Page 88, Sec. 6, line 8, after the word "evidence" insert the words "of the failure."

HeinOnline -- 1874 iv 1874

TABLE OF CONTENTS.

PAGE.

CONSTITUTION OF THE UNITED STATES, ... 1–13

AMENDMENTS TO CONSTITUTION, ... 14–18

ORGANIC ACT OF MONTANA TERRITORY, ... 19–31

AMENDMENTS TO ORGANIC ACT, ... 31–34

ADMINISTRATORS AND EXECUTORS.

AN ACT to provide for the more speedy settlement of small estates, 35–36

APPORTIONMENT.

A BILL for an act apportioning the members of the legislative assembly, and prescribing the time of their election, . . 36–38

APPROPRIATION.

AN ACT to appropriate certain moneys in the sinking fund to defray the expenses of the Montana penitentiary, . . . 39

AUDITOR.

AN ACT defining the duties of territorial auditor, . . 39–40

BASTARDS.

AN ACT for the support and maintenance of illegitimate children, 40–43

CAPITAL LAW.

AN ACT to change the seat of government of the territory of Montana, ... 43–46

CIVIL PRACTICE ACT.

AN ACT to amend sections 56, 139, 140, 155, and 156 of an act approved January 12, 1872, entitled "An Act to regulate proceedings in civil cases in the courts of justice of the territory of Montana," 46–49

HeinOnline -- 1874 v 1874

PAGE.

CIVIL PRACTICE ACT.

AN ACT to amend an act to regulate proceedings in civil cases in the courts of justice in the territory of Montana, . . . 49–59

CRIMINAL PRACTICE ACT.

AN ACT to amend an act entitled "An Act to regulate proceedings in criminal cases in the courts of justice in the territory of Montana," approved January 12th, 1872, ... 59–60

CRIMINAL LAWS.

AN ACT to regulate proceedings in cases of certain misdemeanors, 61

CRIMINAL LAWS.

AN ACT defining certain offences therein named, and providing a punishment therefor, ... 61–62

COUNTY COMMISSIONERS.

AN ACT to amend sections 23 and 25 of Chapter XXI. of "An Act re-enacting, codifying, and revising the general and permanent laws of Montana territory," approved January 12th, 1872, . 63–6

COUNTY COMMISSIONERS.

AN ACT authorizing the county commissioners of the several counties to dispose of the surplus moneys in the different county funds, ... 64

COSTS — FEES.

AN ACT to curtail certain expenses, ... 64–65

COUNTIES AND COUNTY BOUNDARIES.

AN ACT to amend section 7 of Chapter XX. of an act entitled "An Act revising, re-enacting, and codifying the general and permanent laws of Montana territory," 66–67

COUNTIES — MADISON, BEAVERHEAD.

AN ACT to attach to the counties of Madison and Beaverhead, that portion of the public domain described in the act of Congress, approved February 17th, 1873, entitled "An Act to re-adjust the western boundary of Dakota territory," 68

HeinOnline -- 1874 vi 1874

PAGE.

COUNTY ORDERS.

AN ACT to amend section 94 of Chapter XXI. of an act entitled "An Act revising, re-enacting and codifying the general and permanent laws of Montana territory," approved January 12th, 1872, ... 68–69

COUNTIES AND COUNTY OFFICERS.

AN ACT amending "An Act revising, re-enacting, and codifying the general and permanent laws of Montana territory, in relation to county and county officers," approved January 12th, 1872, . 69–70

COUNTY OFFICERS — REVENUE.

AN ACT to amend "An Act in relation to counties and county officers," approved July 12th, 1872, ... 70–71

COUNTY POOR.

AN ACT entitled "An Act to amend Chapter L. of the general and miscellaneous laws of Montana territory," approved January 12th, 1872, ... 71–73

DEAF, MUTE, AND BLIND CHILDREN.

AN ACT to provide for the education of deaf, mute, and blind children, ... 73–75

DEPUTY DISTRICT CLERKS.

AN ACT to authorize the appointment and qualification of deputy clerks of the district court, ... 75–76

ELECTIONS.

AN Act amending an act entitled "An Act revising, re-enacting, and codifying the general and permanent laws of Montana territory," approved January 12th, 1872, ... 76–77

ELECTIONS.

AN ACT to amend section 32 and section 33 of Chapter XXIII. of an act entitled "An Act, revising, re-enacting, and codifying the general and permanent laws of Montana territory," approved January 12th, 1872, ... 77–78

HeinOnline -- 1874 vii 1874

PAGE.

ELECTIONS.

AN ACT to amend section 51 of Chapter XXIII. of "An Act revising, re-enacting, and codifying the general and permanent laws of Montana," approved January 12th, 1872, ... 78

FEES.

AN ACT to amend an act entitled "An Act to amend an act to provide for and regulate the rate of charges for the publication of legal documents," approved December 28th, 1871, . . 79

FEES.

AN ACT to establish the fees of territorial treasurer and auditor, 79–80

INSANE.

AN ACT to provide for the custody, maintenance, and treatment of the insane, ... 80

JOINT DEBTORS.

AN ACT in relation to joint debtors, ... 81–38

LICENSES.

AN ACT to repeal section 25 of "An Act concerning license," approved May 8th, 1873, in relation to telegraph lines, . . 83

LIENS.

AN ACT in relation to mechanics' liens, ... 84–85

LIVE STOCK.

A BILL for an act concerning the management of live stock, and the better to protect the interests of stock-growers in the territory of Montana, ... 85–90

MARKS AND BRANDS.

AN ACT in relation to trade marks and brands, . . . 90–92

MARRIED WOMEN — SOLE TRADERS.

AN ACT to authorize married women to transact business in their own name, as sole traders, ... 93–94

HeinOnline -- 1874 viii 1874

MINES — RIGHT OF WAY.

PAGE.

AN ACT to amend section 13 of Chapter LXXXIII. of an act entitled "An Act concerning the rights of way and easements, and other necessary means for the development of mines," approved January 4th, 1872, ... 94–95

PENITENTIARY.

AN ACT to amend an act entitled "An Act to regulate and govern the Montana penitentiary," approved May 8th, 1873, . . 95–96

PLACER MINES.

AN ACT to repeal an act entitled "An Act to provide for the forfeiture, to the territory, of placer mines, held by aliens," approved January 12th, 1872, ... 97

PROBATE COURTS.

AN ACT to provide for the holding of terms of the probate court, 97

PROBATE CLERK.

AN ACT to amend an act entitled "An Act revising, re-enacting, and codifying the general and permanent laws of Montana territory," approved January 12th, 1872, ... 98

PUBLICATION — LEGAL NOTICES.

AN ACT to regulate the rights of parties in the publication of legal notices, ... 99

REVENUE.

AN ACT to amend section 44 of chapter LXXXV. of an act entitled "An Act revising, re-enacting, and codifying the general and permanent laws of Montana territory," providing for the collection of the revenue, approved January 12th, 1872, . . 100

REVENUE.

AN ACT to amend an act entitled "An Act providing for the collection of revenue," approved January 12th, 1872, . . . 101–102

REVENUE.

AN ACT to amend an act entitled "An Act providing for the collection of revenue," and to repeal section 1 of said act, . . 102–103

ROADS AND HIGHWAYS.

PAGE.
AN ACT in relation to roads and highways, ... 103–115

SCHOOLS.

AN ACT to provide for a system of common schools, . . 115–139

STATISTICS.

AN ACT to provide for the collection of statistics, . . . 139–141

TOLL ROADS AND BRIDGES.

AN ACT in relation to toll roads and bridges, . . . 142–143

SPECIAL LAWS.

AN ACT to authorize the county commissioners of Deer Lodge county to remove the dead from the cemetery within the limits of the town of Deer Lodge, ... 144

AN ACT to authorize the county commissioners of Deer Lodge county to appoint a fire warden, and for other purposes, . . 144–145

AN ACT to provide for the support and maintenance of the Deer Lodge fire department, ... 145–146

AN ACT to authorize the county commissioners of Deer Lodge county to audit certain claims, ... 147

AN ACT to authorize the county commissioners of Deer Lodge county to levy a special tax for the purpose of building, buying, and repairing bridges, ... 147–148

AN ACT to authorize the county commissioners of Gallatin county to appoint a fire warden in the town of Bozeman, and for other purposes, ... 148–149

AN ACT to authorize the county commissioners of Lewis and Clark county to establish fire limits within the town of Helena, and other purposes, ... 149–152

AN ACT to provide for the redemption of the funded debt of Lewis and Clark county, ... 152–153

AN ACT to provide for the support and maintenance of the Helena fire department, ... 153–154

HeinOnline -- 1874 x 1874

PAGE.

AN ACT in relation to a fire tax in the town of Helena, Lewis and Clark county, ... 155

AN ACT to amend an act entitled "An Act authorizing the county commissioners of Missoula county to levy a special tax, for the purpose of building, buying, and repairing bridges," . . 155–157

AN ACT to amend an act entitled "An Act to incorporate the city of Virginia, approved December 30th, 1864," 157

AN ACT to incorporate the town of Bozeman, . . . 158–171

JOINT MEMORIALS.

House Joint Memorial in relation to the Yellowstone national park, 172–173

House Joint Memorial in relation to irrigation, . . . 174–176

House Joint Memorial in relation to the public domain, . . 177–180

Council Joint Memorial in relation to lands in the Bitter Root Valley, ... 181

Council Joint Memorial in relation to the protection of the Yellowstone Valley, and of communication with the town of Bismark, in Dakota, ... 182–183

House Joint Memorial in relation to opening lands in Bitter Root Valley to settlement, ... 183–184

Council Joint Memorial in relation to the protection of citizens of Deer Lodge and Missoula counties, ... 184–185

House Joint Memorial in relation to the improvement of the Yellowstone river, for the purpose of navigation, ... 186–187

JOINT RESOLUTIONS.

Council Joint Resolution, ... 188

Council Joint Resolution in relation to the correction and distribution of the laws, ... 188

House Concurrent Resolution in relation to the Centennial Exhibition, ... 189

HeinOnline -- 1874 xi 1874

PAGE.

House Concurrent Resolution in relation to the historical society of Montana, ... 189

Council Concurrent Resolution to pay for *Daily Herald*, . . 190

Council Concurrent Resolution to pay J. M Knight for services rendered, ... 190

Council Joint Resolution in relation to the publication of the report of the directors and warden of the Montana penitentiary, . 190–191

Council Joint Resolution to pay for repairing the arsenal, . . 191

House Joint Resolution in relation to printing, . . . 191

Council Concurrent Resolution in relation to printing, . . 192

House Joint Resolution to compensate L. M. Todd for transporting ammunition from Helena to the arsenal at Virginia City, . 192

Council Concurrent Resolution in relation to printing, . . 192

HeinOnline -- 1874 xii 1874

CONSTITUTION

OF THE

UNITED STATES OF AMERICA.

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

Section 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

Sec. 2. The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union,

HeinOnline -- 1874 1 1874

according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and including Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of *New Hampshire* shall be entitled to choose three, *Massachusetts* eight, *Rhode Island* and *Providence Plantations* one, *Connecticut* five, *New York* six, *New Jersey* four, *Pennsylvania* eight, *Delaware* one, *Maryland* six, *Virginia* ten, *North Carolina* five, *South Carolina* five, and *Georgia* three.

When vacancies happen in the representation of any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

Sec 3. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into the three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year, and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

HeinOnline -- 1874 2 1874

The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

The senate shall choose their other officers, and also a president *pro tempore*, in the absence of the vice president, or when he shall exercise the office of president of the United States.

The senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

Sec. 4. The times, places and manner, of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Sec. 5. Each house shall be the judge of elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secresy; and the yeas and nays of

HeinOnline -- 1874 3 1874

the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Sec. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

Sec. 7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it becomes a law, be presented to the president of the United States; if he approve, he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such consideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall

HeinOnline -- 1874 4 1874

not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary (except on the question of adjournment), shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be re-passed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

Sec. 8. The congress shall have power—

To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

HeinOnline -- 1874 5 1874

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules rules for the government and regulation ot the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasion;

To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards and other needful buildings; and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

Sec. 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another;

HeinOnline -- 1874 6 1874

nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Sec. 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of congress.

No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war unless actualy invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

Section 1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected as follows:—

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole

HeinOnline -- 1874 7 1874

number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[*The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such a majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president. But in choosing the president the vote shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case after the choice of president, the person having the the greatest number of votes of the electors shall be the vice president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice president.]

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

*Annulled. See 12th Amendment.

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In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president, and the congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed or a president shall be elected.

The president shall, at stated times, receive for his services a compensation, which shall neither be increased or diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

Sec. 2. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states when called into the actual service of the United States; he may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have the power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law; but the congress may by law vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of departments.

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The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions, which shall expire at the end of their next session.

Sec. 3. He shall from time to time give to the congress such information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws are faithfully executed, and shall commission all the officers of the United States.

Sec. 4. The president, vice president, and all civil officers of the United States, shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

Section 1. The judicial power of the United States shall be vested in one supreme court, and such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their office during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

Sec. 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; [*between a state and citizens of another state;] between citizens of different states; between citizens of the

*Annulled. See 11th Amendment.

HeinOnline -- 1874 10 1874

same state claiming lands under grants of different states, and between a state or the citizens thereof, and foreign states, citizens, or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trials shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

Sec. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving then aid and comfort. No person shall be convicted of treason unless on the testiomny of two witnesses to the same overt act, or on confession in open court.

The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

Section 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Sec. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

HeinOnline -- 1874 11 1874

No person held to service or labor in one state under the laws thereof, escaping to another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Sec. 3. New states may be admitted by the congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to predjudice any claims of the United States, or of any particular state.

Sec. 4. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

ARTICLE V.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as one or the other mode of ratification may be proposed by the congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

HeinOnline -- 1874 12 1874

ARTICLE VI.

All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution as under the confederation.

This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

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AMENDMENTS

TO THE

CONSTITUTION OF THE UNITED STATES.

ARTICLE I.

Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

HeinOnline -- 1874 14 1874

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land and naval forces, or in the militia when in actual service in time of war or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

ARTICLE VII.

In suits at common law, where the value at controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined by any court of the United States than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration, in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

HeinOnline -- 1874 15 1874

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

ARTICLE XII.

The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom at least shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each, which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before

HeinOnline -- 1874 16 1874

the fourth day of March next following, then the vice president shall act as president, as in the case of the death or other unconstitutional disability of the president.

The person having the greatest number of votes as vice president shall be the vice president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the senate shall choose the vice president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice president of the United States.

ARTICLE XIII.

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Sec. 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.

Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature

HeinOnline -- 1874 17 1874

thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of citizens twenty-one years of age in such state.

Sec. 3. No person shall be a senator or representative in congress, or elector of president and vice president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may, by a vote of two-thirds of each house remove such disability.

Sec. 4. The validity of the public debt of the United States, authorized by law, including the debts incurred for payment of pension and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave, but all such debts, obligations, and claims shall be held illegal and void.

Sec. 5. That congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any state, on account of race, color, or previous condition of servitude.

Sec. 2. Congress shall have power to enforce this article by appropriate legislation.

HeinOnline -- 1874 18 1874

ORGANIC ACT

OF THE

TERRITORY OF MONTANA.

(PUBLIC, No. 76.)

AN ACT to provide a temporary government for the Territory of Montana

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

That all that part of the territory of the United States included within the limits, to wit: Commencing at a point formed by the intersection of the twenty-seventh degree of longitude west from Washington with the forty-fifth degree of north latitude; thence due west on said forty-fifth degree of latitude to a point formed by its intersection with the thirty-fourth degree of longitude west from Washington; thence due south along the said thirty-fourth degree of longitude to its intersection with the forty-fourth degree and thirty minutes of north latitude; thence due west along said forty-fourth degree and thirty minutes of north latitude to a point formed by its intersection with the crest of the Rocky Mountains; thence following the crest of the Rocky Mountains northward till its intersection with the Bitter Root Mountains; thence northward along the crest of said Bitter Root Mountains to its intersection with the thirty-ninth degree of longi-

HeinOnline -- 1874 19 1874

tude west from Washington; thence along said thirty-ninth degree of longitude northward to the boundary line of the British Possessions; thence eastward along said boundary line to the twenty-seventy degree of longitude west from Washington; thence southward along said twenty-seventh degree of longitude to the place of beginning, be, and the same is hereby, created into a temporary government by the name of the Territory of Montana: *Provided*, That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said territory or changing its boundaries in such manner and at such times as congress shall deem convenient and proper, or from attaching any portion of said territory to any other state or territory of the United States: *Provided further*, That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said territory so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribes, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any state or territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the territory of Montana, until said tribe shall signify their assent to the president of the United States to be included within said territory, or to affect the authority of the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent for the government to make if this act had never passed.

Sec. 2. *And be it further enacted*, That the executive power and authority in and over said territory of Montana shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States. The governor shall reside within said territory and shall be commander-in-chief of the militia and superintendent of Indian affairs thereof. He may grant pardons and respites for offences

HeinOnline -- 1874 20 1874

against the laws of said territory, and reprieve for offences against the laws of the United States, until the decision of the president of the United States can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of said territory, and shall take care that the laws be faithfully executed.

Sec. 3. *And be it further enacted*, That there shall be a secretary of said territory, who shall reside therein and hold his office for four years, unless sooner removed by the president of the United States; he shall record and preserve all laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and journals of the legislative assembly, within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence, semi-annually, on the first days of January and July in each year, to the president of the United States, and two copies of the laws to the president of the senate and to the speaker of the house of representatives, for the use of congress. And in case of the death, removal, resignation, or absence of the governor from the territory, the secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the governor, during such vacancy or absence, or until another governor shall be duly appointed and qualified to fill such vacancy.

Sec. 4. *And be it further enacted*, That the legislative power and authority of the said territory shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of seven members having the qualifications of voters, as hereinafter prescribed, whose term of service shall continue two years. The house of representatives shall, at its first session, consist of thirteen members, possessing the same qualifications as prescribed for the members of the council, and whose term of service shall continue one year. The number of representatives may be increased by the legislative assembly, from time to time, to twenty-six, in proportion

HeinOnline -- 1874 21 1874

to the increase of qualified voters; and the council, in like manner, to thirteen. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts for the election of the council and representatives, giving to each section of the territory representation in the ratio of its qualified voters as nearly as may be. And the members of the council and of the house of representatives shall reside in, and be inhabitants of, the district, or county, or counties, for which they may be elected, respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants and qualified voters of the several counties and districts of the territory to be taken by such persons and in such mode as the governor shall designate and appoint, and the person so appointed shall receive a reasonable compensation therefor. And the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who shall superintend such election and the returns thereof, as the governor shall appoint and direct; and he shall at the same time declare the number of members of the council and house of representatives to which each of the counties or districts shall be entitled under this act. The persons having the highest number of legal votes in each of said council districts, respectively, for members of the council, shall be declared by the governor to be duly elected to the council; and the persons having the highest number of legal votes for the house of representatives in each of said representative districts, respectively, shall be declared by the governor to be duly elected members of said house: *Provided*, That in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the legislative assembly, the governor shall order a new election. And the persons thus elected to the legislative assembly shall meet at such place and on such day as the governor shall appoint; but thereafter the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the council and house of representatives, according to the number of qualified voters, shall

HeinOnline -- 1874 22 1874

be prescribed by law, as well as the day of commencement of the regular sessions of the legislative assembly: *Provided*, That no session in any one year shall exceed the term of forty days, except the first session, which may continue sixty days.

Sec. 5. *And be it further enacted*, That all citizens of the United States, and those who have declared their intentions to become such, and who are otherwise described and qualified under the fifth section of the act of congress providing for a temporary government for the territory of Idaho, approved March third, eighteen hundred and sixty-three, shall be entitled to vote at said first election, and shall be eligible to any office within the said territory; but the qualifications of voters, and of holding office, at all subsequent elections, shall be such as shall be prescribed by the legislative assembly.

Sec. 6. *And be it further enacted*, That the legislative power of the territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States, nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. Every bill which shall have passed the council and house of representatives of the said territory shall, before it becomes a law, be presented to the governor of the territory. If he approve, he shall sign it; but if not, he shall return it, with his objections, to the house in which it originated, who shall enter the objections at large upon their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of such houses shall be determined by yeas and nays, to be entered on the journals of each house, respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the assembly, by

HeinOnline -- 1874 23 1874

adjournment, prevent its return, in which case it shall not be a law: *Provided*, That whereas slavery is prohibited in said territory by act of congress of June nineteenth, eighteen hundred and sixty-two, nothing herein contained shall be construed to authorize or permit its existence therein.

Sec. 7. *And be it further enacted*, That all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected as the case may be, in such manner as shall be provided by the governor and legislative assembly of the Territory of Montana. The governor shall nominate, and, by and with the advice and consent of the legislative council, appoint all officers not herein otherwise provided for, and in the first instance the governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the legislative assembly, and shall lay off the necessary districts for the members of the council and house of representatives and all other officers.

Sec. 8. *And be it further enacted*, That no member of the legislative assembly shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first legislative assembly. And no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly; or shall hold any office under the government of said territory.

Sec. 9. *And be it further enacted*, That the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually; and they shall hold their offices during the period of four years, and until their successors shall be appointed and qualified. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said dis-

HeinOnline -- 1874 24 1874

tricts by one of the justices of the supreme court, at such times and places as may be prescribed by law; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of justices of the peace, shall be limited by law; *Provided*, That justices of the peace shall not have jurisdiction of any matter in controversy when the title of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts respectively, shall possess chancery as well as common law jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exceptions, and appeals shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law. The supreme court, or the justices thereof, shall appoint its own clerk; and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decisions of said supreme court shall be allowed, and may be taken to the supreme court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witnesses, shall exceed one thousand dollars, except that a writ of error or appeal shall be allowed to the supreme court of the United States from the decision of the said supreme court created by this act, or of any judge thereof, or of the district courts created by this act, or of any judge thereof, upon any writs of habeas corpus involving the question of personal freedom. And each of the said district courts shall have and exercise the same jurisdiction, in all cases arising under the Constitution and laws of the United States, as is vested in the district and circuit courts of the United States; and the first six days of every

HeinOnline -- 1874 25 1874

term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws; and writs of error and appeal in all such cases shall be made to the supreme court of said territory the same as in other cases. The said clerks shall receive in all such cases the same fees which the clerks of the district courts of Washington territory now receive for similar services.

Sec. 10. *And be it further enacted*, That there shall be appointed an attorney for said territory, who shall continue in office four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States, and who shall receive the same fees and salary as the attorney of the United States for the present territory of Washington. There shall also be a marshal for the territory appointed, who shall hold his office for four years and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as circuit and districts of the United States. He shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees, as the marshal of the district court of the United States for the present territory of Washington, and shall, in addition, be paid two hundred dollars annually as a compensation for extra services. There shall also be appointed by the president of the United States, by and with the advice and consent of the senate, a surveyor general of said territory, who shall locate his office at such place as the secretary of the interior shall from time to time direct, and whose duties, powers, obligations, responsibilities, compensation, and allowances for clerk hire, office rent, fuel, and incidental expenses, shall be the same as those of the surveyor general of New Mexico, under the direction of the secretary of the interior, and such instructions as he may from time deem it advisable to give.

Sec. 11. *And be it further enacted*, That the governor, secretary, chief justice, and associate justices, attorney and marshal, shall be appointed by the president of the United States,

HeinOnline -- 1874 26 1874

by and with the advice and consent of the senate. The governor and secretary to be appointed as aforesaid, shall, before they act as such, respectively take an oath or affirmation before the district judge, or some justice of the peace in the limits of said territory, duly authorized to administer oaths and affirmations by the laws now in force therein, or before the chief justice or some associate justice of the supreme court of the United States, to support the constitution of the United States, and faithfully to discharge the duties of their respective offices; which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken; and such certificates shall be received and recorded by the said secretary among the executive proceedings; and the chief justice and associate justices, and all civil officers in said territory, before they act as such, shall take a like oath or affirmation before the said governor or secretary, or some judge or justice of the peace of the territory who may be duly commissioned and qualified, or before the chief justice or some associate justice of the supreme court of the United States, which said oath or affirmation shall be certified and transmitted by the person taking the same to the secretary, to be by him recorded as aforesaid; and afterwards the like oath or affirmation shall be taken, certified and recorded in such manner and form as may be prescribed by law. And any person who has heretofore been appointed chief justice or associate justice of the territory of Idaho, who has not yet taken the oath of office, as prescribed by the act organizing said territory, may take said oath or affirmation before the chief justice or some associate justice of the supreme court of the United States. The governor shall receive an annual salary of two thousand five hundred dollars; the chief justice and associate justices shall receive an annual salary of two thousand five hundred dollars; the secretary shall receive an annual salary of two thousand dollars. The said salaries shall be paid quarter-yearly from the dates of the respective appointments at the treasury of the United States; but no payment shall be made until said officers shall have entered upon the duties of their respective appointments. The members of

HeinOnline -- 1874 27 1874

the legislative assembly shall be entitled to receive four dollars each per day, during their attendance at the sessions thereof, and four dollars each for every twenty miles travel, in going to and returning from said sessions, estimated according to the nearest usually traveled routes; an additional allowance of four dollars per day shall be paid to the presiding officer of each house for each day he shall so preside. And a chief clerk, one assistant clerk, one engrossing and one enrolling clerk, a sergeant-at-arms, and door-keeper may be chosen for each house; and the chief clerk shall receive four dollars per day, and the said other officers three dollars per day during the session of the legislative assembly; but no other officers shall be paid by the United States: *Provided*, That there shall be but one session of the legislative assembly annually, unless on an extraordinary occasion the governor shall think proper to call the legislative assembly together. There shall be appropriated annually the usual sum, to be expended by the governor to defray the contingent expenses of the territory, including the salary of the clerk of the executive department. And there shall also be appropriated annually a sufficient sum, to be expended by the secretary of the territory, and upon an estimate to be made by the secretary of the treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws, and other incidental expenses. And the governor and secretary of the territory shall, in the disbursement of all moneys entrusted to them, be governed solely by the instructions of the secretary of the treasury of the United States, and shall semi-annually account to the said secretary for the manner in which the aforesaid moneys shall have been expended; and no expenditure shall be made by said legislative assembly for objects not specially authorized by the acts of congress making the appropriations, nor beyond the sums thus appropriated for such objects.

Sec. 12. *And be it further enacted*, That the legislative assembly of the Territory of Montana shall hold its first session at such time and place in said territory as the governor thereof shall appoint and direct; and at said first session, or as soon

HeinOnline -- 1874 28 1874

thereafter as they shall deem expedient, the governor and legislative assembly shall proceed to locate and establish the seat of governmeht at such place as they may deem eligible: *Provided*, That the seat of government fixed by the governor and legislative assembly shall not be at any time changed except by an act of the said assembly duly passed, and which shall be approved after due notice, at the first general election thereafter by a majority of the legal votes cast on that question.

Sec. 13. *And be it further enacted*, That a delegate to the house of representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other territories of the United States to the said house of representatives; but the delegate first elected shall hold his seat only during the term of the congress to which he shall be elected. The first election shall be held at such time and places, and be conducted in such manner, as the governor shall appoint and direct; and at all subsequent elections, the time and places, and manner of holding elections, shall be prescribed by law. The person having the greatest number of legal votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly. That the Constitution and all the laws of the United States which are not locally inapplicable shall have the same force and effect within the said Montana territory as elsewhere within the United States.

Sec. 14. *And be it further enacted*, That when the lands in said territory shall be surveyed, under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said territory, and in the states and territories hereafter to be erected out of the same.

HeinOnline -- 1874 29 1874

Sec. 15. *And be it further enacted*, That, until otherwise provided by law, the governor of said territory may define the judicial districts of said territory, and assign the judges who may be appointed for said territory to the several districts, and also appoint the times and places for holding courts in the several counties or sub-divisions in each of said judicial districts, by proclamation to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.

Sec. 16. *And be it further enacted*, That all officers to be appointed by the president of the United States, by and with the advice and consent of the senate, for the Territory of Montana, who, by virtue of the provisions of any law now existing, or which may be enacted by congress, are required to give security for moneys that may be entrusted to them for disbursement, shall give such security at such time and in such manner as the secretary of the treasury may prescribe.

Sec. 17. *And be it further enacted*, That all treaties, laws, and other engagements made by the government of the United States with the Indian tribes inhabiting the territory embraced within the provisions of this act, shall be faithfully and rigidly observed, anything contained in this act to the contrary notwithstanding; and that the existing agencies and superintendencies of said Indians be continued, with the same powers and duties which are now prescribed by law, except that the president of the United States may, at his discretion, change the location of the office of said agencies or superintendents.

Sec. 18. *And be it further enacted*, That until congress shall otherwise direct, all that part of the territory of Idaho included within the following boundaries, to-wit: Commencing at a point formed by the intersection of the thirty-third degree of longitude west from Washington with the forty-first degree of north latitude; thence along said thirty-third degree of longitude to the crest of the Rocky Mountains; thence northward along the said crest of the Rocky Mountains to its intersection with the forty-fourth degree and thirty minutes of north lati-

HeinOnline -- 1874 30 1874

tude; thence eastward along said forty-fourth degree thirty minutes north latitude to the thirty-fourth degree of longitude west from Washington; thence northward along said thirty-fourth degree of longitude to its intersection with the forty-fifth degree north latitude; thence eastward along said forty-fifth degree of north latitude to its intersection with the twenty-seventh degree of longitude west from Washington; thence south along said twenty-seventh degree of longitude west from Washington to the forty-first degree north latitude; thence west along said forty-first degree north latitude to the place of beginning, shall be, and is hereby, incorporated temporarily into, and made part of, the Territory of Dakota.

Approved May 26, 1864.

DEPARTMENT OF STATE,
WASHINGTON, May 28, 1864.

A true copy:

W. H. HUNTER, *Chief Clerk.*

(PUBLIC, No. 65.)

AN ACT amendatory of "An Act to provide a temporary government for the Territory of Montana," approved May 26, 1864.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

That the legislative assemblies of the several territories of the United States shall not, after the passage of this act, grant private charters or special privileges, but they may, by general incorporation acts, permit persons to associate themselves together as bodies corporate for mining, manufacturing, and other industrial pursuits.

Sec 2. *And be it further enacted,* That the probate courts of the territory of Montana, in their respective counties, in addition to their probate jurisdiction, are hereby authorized to hear and determine civil causes wherein the damage or debt

HeinOnline -- 1874 31 1874

claimed does not exceed five hundred dollars, and such criminal cases arising under the laws of the territory as do not require the intervention of a grand jury: *Provided*, That they shall not have jurisdiction in any matter in controversy when the title or right to the peaceable possession of land may be in dispute or chancery, or divorce causes; *And provided further*, That in all cases an appeal may be taken from any order, judgment, or decree of said probate court to the district court.

Sec. 3. *And be it further enacted*, That the chief justice and associate justices of said territory and the territory of Idaho shall each receive an annual salary of thirty-five hundred dollars.

Sec. 4. *And be it further enacted*, That the judges of the supreme court of said territory, or a majority of them, shall, when assembled at the seat of government of said territory, define the judicial districts of said territory, and assign the judges who may be appointed for said territory to the several districts, and shall also fix and appoint the times and places for holding the courts in the several counties or sub-divisions in each of said judicial districts, and alter the times and places of holding the courts as to them shall seem proper and convenient, but not less than two terms shall be held at each place of holding court each year.

Sec. 5. *And be it further enacted*, That for the purpose of receiving the legislative functions of the territory of Montana, which have been adjudged therein to have lapsed, the governor of said territory be, and he is hereby, authorized, on or before the first day of July, eighteen hundred and sixty-seven, to divide said territory into legislative districts for the election of members of the council and house of representatives, and to apportion among said districts the number of members of the legislative assembly provided for in the organic act of said territory, and the election of said members of the legislative assembly shall be held at such time and shall be conducted in the manner prescribed by the legislative assembly of said territory at the session thereof, begun and holden at the city of Bannock, in eighteen hundred and sixty-four and eighteen hundred and sixty-five, and the qualifications of voters shall

HeinOnline -- 1874 32 1874

be the same as that prescribed by said organic act, saving and excepting the distinction therein made on account of race or color, and the legislative assembly so elected shall convene at the time prescribed by said legislative assembly at the session last aforesaid. The apportionment provided for in this section shall be based upon such an enumeration of the qualified electors of the said several legislative districts as shall appear from the election returns in the office of the secretary of said territory, and from such other sources of information as shall enable the governor, without taking a new census, to make an apportionment which shall fairly represent the people of the several districts in both houses of the legislative assembly, but the legislature may at any time change the legislative districts of the territory as fixed by the governor.

Sec. 6. *And be it further enacted,* That all acts passed at the two sessions of the so-called legislative assembly of the Territory of Montana, held in eighteen hundred and sixty-six, are hereby disapproved and declared null and void, except such acts as the legislative assembly herein authorized to be elected, shall, by special act, in each case, re-enact: *Provided, however,* That in all the claims of vested rights thereunder, the party claiming the same shall not, by reason of anything in this section contained, be precluded from making and testing said claim in the the courts of said territory; *And provided further,* That no legislation or pretended legislation in said territory since the adjournment of the first legislative assembly shall be deemed valid until the election of the legislative assembly herein provided for shall take place.

Sec. 7. *And be it further enacted,* That from and after the first day of April next, the salary of each of the judges of the several supreme courts in each of the organized territories (except Montana and Idaho) shall be two thousand five hundred dollars.

Sec. 8. *And be it further enacted,* That all acts and parts of acts inconsistent with this act are hereby repealed.

Approved March 2, 1867.

HeinOnline -- 1874 33 1874

AN ACT regulating the compensation of the members and officers of the Legislative Assemblies of the several territories of the United States and limiting the duration of the sessions of said assemblies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

That the sessions of the legislative assemblies of the several territories of the United States shall be limited to forty days duration.

Sec. 2. That the members of each branch of said legislatures shall receive a compensation of six dollars per day during the sessions herein provided for, and they shall receive such mileage as now provided by law: *Provided*, That the president of the council and the speaker of the house of representatives shall each receive a compensation of ten dollars per day, and that the additional officers of each branch of said legislative assemblies shall consist of one chief clerk, who shall receive a compensation of eight dollars per day, and one assistant clerk, one enrolling clerk, one engrossing clerk, one sergeant-at-arms, one door-keeper, one messenger, and one watchman, who shall each receive a compensation of five dollars per day during the sessions.

Sec. 3. That from and after the first day of July, eighteen hundred and seventy-three, the annual salaries of the governors of the several territories of the United States shall be three thousand five hundred dollars, and the salaries of the secretaries of said territories shall be two thousand five hundred dollars each.

Sec. 4. That the provisions of this act shall not apply to the District of Columbia: *Provided*, That no law of any territorial legislature shall be made or enforced by which any officer of a territory herein provided for, or the officers or members of any territorial legislature shall be paid any compensation other than that provided by the laws of the United States.

Approved January 23, 1873.

HeinOnline -- 1874 34 1874

LAWS OF MONTANA.

ADMINISTRATORS AND EXECUTORS.

AN ACT to provide for the more speedy settlement of small estates.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. If it shall appear, at the time of filing the inventory and appraisement, that the estate or a deceased person does not exceed five hundred dollars, the probate judge shall thereupon make an order that the administrator make final settlement of such estate at the end of six months from the date of such order. Notice of the making of such order, and of the time and place of such settlement, shall be forthwith made and published in the same manner and for the same length of time as now required for notice of final settlement. Such notice shall also state that letters testamentary or of administration have been granted, giving the date thereof, and that all persons having claims against the said estate are required to exhibit them for allowance, on or before the day named therein for final settlement, and that if such claims be not thus exhibited, they will be forever barred.

Estates not exceeding $500 settled in six months.

Notice of order, time, and place of settlement.

Claims against, for allowance.

Sec. 2. The administration of such estates shall in other respects be conducted in the same manner

Manner of administration.

as now provided by law, except that if any part of such estate is real property it shall be sold at the same time and in the same manner as the personal property.

Real estate sold as personal property.

Final settlements.

Sec. 3. At the time mentioned in said notice, or such further time as may be granted by the court, the administrator shall make final settlement of such estates. If creditors, who have proved their claims, are not present in court to receive their money at the time of making such settlement, the administrator shall pay the same over to the probate judge, taking his receipt therefor, and thereafter the probate judge shall pay over such sum or sums to the proper claimant or claimants, upon demand.

Disposition of money at settlement.

Probate judge may extend time for making final settlement.

Sec. 4. For good cause shown the probate judge may extend the time for making such final settlement, but in no case shall it be extended beyond one year from the date of issuance of letters of administration in such estates.

Repealing clause.

Sec. 5. That all acts and parts of acts in conflict with [this] act be, and the same are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its passage.

Approved Feb. 13th, 1874.

APPORTIONMENT.

A BILL for an Act apportioning the members of the Legislative Assembly, and prescribing the time of their election:

Be it enacted by the Legislative Assembly of the Territory of Montana:

When Legislature to convene.

Section 1. That the next session of the Legislative Assemby of the Territory of Montana shall convene at the seat of government of said territory on the first Monday of January, in the year one thousand eight hundred and seventy-six, at noon of said day, and biennially thereafter.

HeinOnline -- 1874 36 1874

Number of members

Sec. 2. The Legislative Assembly of the Territory shall consist of thirteen members of the Council, and twenty-six members of the House of Representatives.

Apportionment of the Council.

Sec. 3. The members of the Council shall be apportioned to the several counties of the Territory as follows:

To the county of Madison, one member.

To the counties of Madison and Beaverhead, jointly, one member.

To the county of Deer Lodge, two members.

To the county of Missoula, one member.

To the counties of Deer Lodge and Missoula, jointly, one member.

To the county of Lewis and Clarke, three members.

To the county of Jefferson, one member.

To the county of Gallatin, one member.

To the counties of Jefferson and Gallatin, jointly, one member.

To the counties of Meagher and Choteau, jointly, one member.

Election of members of the Council.

Sec. 4. Of the said members of the Council there shall be elected at the general election in the year one thousand eight hundred and seventy-four:

In the county of Deer Lodge, one member.

In the counties of Deer Lodge and Missoula, jointly, one member.

In the county of Jefferson, one member.

In the counties of Jefferson and Gallatin, jointly, one member.

In the counties of Meagher and Choteau, jointly, one member.

And at the general election in the year one thousand eight hundred and seventy-five there shall be elected:

In the county of Madison, one member.

HeinOnline -- 1874 37 1874

In the counties of Madison and Beaverhead, jointly, one member.

In the county of Deer Lodge, one member.

In the county of Missoula, one member.

In the county of Lewis and Clarke, three members.

In the county of Gallatin, one member.

Apportionment of the House.

Sec. 5. The members of the House of Representatives shall be apportioned to the several counties as follows:

To the county of Madison, four members.

To the county of Beaverhead, one member.

To the county of Deer Lodge, five members.

To the county of Missoula, three members.

To the county of Lewis and Clarke, five members.

To the county of Jefferson, two members.

To the county of Gallatin, two members.

To the counties of Jefferson and Gallatin, jointly, one member.

To the county of Meagher, two members.

To the county of Choteau, one member.

Sec. 6. The members of the House of Representatives shall be elected at the general election in the year one thousand eight hundred and seventy-four.

Elections to fill vacancy in Council or House.

Sec. 7. When any vacancy shall hereafter occur in the office of member of the Council or House of Representatives, either by death, removal, resignation, expiration of official term, or other cause, an election shall be held to supply the same, as provided by law.

Sec. 8. All acts and parts of acts, in conflict with this act, are hereby repealed.

Sec. 9. This act shall be in force from and after its passage.

HeinOnline -- 1874 38 1874

APPROPRIATION.

AN ACT to appropriate certain moneys in the sinking fund to defray the expenses of the Montana penitentiary.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That the sum of ten thousand dollars, now in the treasury of the territory, belonging to the sinking fund, be and the same is hereby appropriated to the expenses of the Montana penitentiary, for the year 1874, the same to be paid out upon the warrants of the territorial auditor, issued as prescribed in section number eighteen of an act entitled, "An Act to regulate and govern the Montana penitentiary," approved May 6th, 1873.

Appropriation for penitentiary.

Same how paid out.

Sec. 2. No territorial warrants shall be advertised and sold, as provided in said section eighteen, until the moneys so appropriated from the said sinking fund shall be exhausted.

Warrants to be advertised and sold.

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved February 13th, 1874.

AUDITOR.

AN ACT defining the duties of Territorial Auditor.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That on the first day of January, of each year, hereafter, that it shall be the duty of the territorial auditor to cause to be published (500) five hundred copies of the auditor's and treasurer's reports in pamphlet form for each preceding year;

Territorial Auditor to publish annual report of auditor and treasurer.

HeinOnline -- 1874 39 1874

and that the sum of three hundred and fifty dollars, or so much thereof as may be necessary, is hereby appropriated for the publication of such reports for the year ending December 31st, 1874, and that the auditor is hereby authorized to draw his warrant on the treasurer for the same, out of any money not otherwise appropriated.

Auditor to draw warrant to pay expenses of report.

Sec. 2. And that it shall be the duty of the territorial auditor thereafter to cause to be printed the reports of the auditor and treasurer in the same manner as provided for other printing in section two, of "An Act for Public Printing."

Reports of same how printed.

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved February, 13th, 1874.

BASTARDS.

AN ACT for the support and maintenance of illegitimate children.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That on complaint to any justice of the peace, in this territory, by any unmarried woman, resident herein, who shall hereafter be delivered of a bastard child, or being pregnant with a child, which, if born alive, may be a bastard, accusing on oath or affirmation any person of being the father of said child, the justice shall take such accusation in writing, and thereupon issue his warrant directed to the sheriff or constable of any county in this territory, commanding him forthwith to bring such accused person before said justice, to answer such complaint; and on return of such warrant, the

On complaint of mother of bastard accused to be arrested.

HeinOnline -- 1874 40 1874

justice in the presence of the accused person, shall examine the complaint [complainant] under oath respecting the cause of her complaint, and such accused person shall be allowed to ask the complaint [complainant] when under oath, any question that he may think necessary for his justification; all of which questions and answers, together with every other part of the examination, shall be reduced to writing by the justice of the peace; and if on such examination, the party accused shall pay, or secure to be paid to the complaint [complainant] such sum or sums of money, or property, as she may agree to receive in full satisfaction, and shall further give bond to the board of county commissioners of the county in which said complaint [complainant] shall reside, and their successors in office, conditioned to save such county free from all charges towards the maintenance of such child, then and in that case the justice shall discharge the party accused out of custody, on his paying the costs of the prosecution; *Provided*, That the agreement aforesaid shall be made or acknowledged by both parties in the presence of the justice, who shall thereupon enter a memorandum of the same upon his docket.

Proceeding on examination in such case.

Right of the accused to question the complainant.

Examination reduced to writing.

Accused may settle with complainant, give bond and be released.

Justice to make memorandum of settlement.

Sec. 2. That when any woman has a bastard child and neglects to bring a suit for its maintenance, or commence a suit and fail to prosecute to final judgment, the county commissioners in any county interested in the support of any such bastard child when sufficient security is not offered to save the county from expense, may bring a suit in behalf of the county, against him who is accused of begetting such child, or may take up and prosecute a suit began by the mother of the child.

If mother of bastard neglects to bring suit, county commissioners may prosecute putative father.

Sec. 3. That in case such accused person does not comply with the provisions in the first section of this act contained, the justice to whom such com-

HeinOnline -- 1874 41 1874

When justice to bind over putative father to district court.

plaint was made shall bind such person in a recognizance to appear at the next setting of the district court of the district in which said county is situated, with sufficient security in a sum not less than five hundred dollars, nor more than one thousand dollars, for the benefit of the county in which such child shall be born, to answer to such accusation and to abide the order of the court thereon, and on neglect or refusal to find such security, the justice shall cause him to be committed to the jail of the county, there to be held to answer such complaint.

Recognizance of accused.

When the accused committed to jail.

Sec. 4. That if at the time of such court, the woman be not delivered or unable to attend, the court shall order the renewal of the bonds of recognizance that the accused person shall be forthcoming at the next sitting of the said court after the birth of the child, at which the mother of said child shall be able to attend, and the continuance of such bonds shall be entered by order of said court, unless the security shall object thereto, and shall have the same force and effect as a recognizance taken in court for that purpose.

When bond to be renewed.

Sec. 5. That when such accused person shall plead not guilty to such charge before the court to which he is recognized, the court shall order the issue to be tried by a jury, and at the trial of such issue the examination before the justice shall be given in evidence, and the mother of the bastard child shall be admitted as a competent witness and the credibility be left to the jury; *Provided, always*, That no woman shall be admitted as a witness as aforesaid, who has been convicted of any crime which would by law disqualify her from being a witness in any other case, and on the trial of the issue the jury shall in behalf of the man accused, take into consideration any want of credibility in the mother of the bastard child, also any variation in her testimony before the justice and before the jury, and also any

Trial of suit when issue joined.

If woman convicted of crime disqualified as witness.

Credibility of woman as witness.

HeinOnline -- 1874 42 1874

other confession of her, at any time, which does not agree with her testimony, or any other proofs or pleas made and produced on behalf of such accused person.

Sec. 6. That in case the jury find the defendant guilty, or such accused person before the trial shall confess in court that the accusation is true, he shall be judged the reputed father of such child, and shall stand charged with the maintenance thereof, in such a sum or sums as the court may order and direct, with payment of costs of prosecution; and the court shall require the reputed father to give security to perform the aforesaid order, and in case the reputed father shall neglect or refuse to give security as aforesaid, and pay the costs of prosecution, he shall be committed to the jail of the county there to remain until he shall comply with the order of the court: *Provided*, That such putative father confined in prison for not complying with the sentence and order of the court, as in this section provided, shall be entitled to the benefit of the prison rules, and of sections 389 and 390 of the act entitled, "An Act to regulate proceedings in criminal cases in the courts of justice in the Territory of Montana," approved January 12th, 1872, as to the same with which he is charged and the costs.

Accused deemed guilty, to maintain child

Bond of putative father when adjudged guilty.

Failure of putative father to give bond.

Putative father entitled to benefit of prison rules, &c., and how released.

Sec. 7. This act shall take effect and be in force from and after its passage.

Approved, February 13th, 1874.

CAPITAL LAW.

AN ACT to change the seat of government of the Territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That the seat of government of the Territory of Montana be, and the same is hereby,

Seat of government changed.

HeinOnline -- 1874 43 1874

changed from the city of Virginia, in the county of Madison, to the town of Helena, in the county of Lewis and Clark, upon approval hereof as hereinafter provided.

Act voted on at general election.

Sec. 2. That, this act shall be known as the Capital Law, and at the general election in this territory, to be held in the year one thousand eight hundred and seventy-four, it shall be submitted to the qualified electors of the Territory of Montana, who are duly qualified to vote thereat, in the manner and form herein prescribed.

Manner of voting.

Sec. 3. Any elector desiring to vote thereon, shall write or print, or cause to be written or printed, upon the ballot which he shall cast at said election, the words " Capital Law approved," or " Capital Law disapproved," and if upon return and final count of the votes, it shall appear that a greater number of votes were cast reading " Capital Law approved " than were cast reading " Capital Law disapproved," then, and in that case, it shall be taken, deemed and held that this law has been duly approved, and that the seat of government of the Territory of Montana has been in due form of law removed to the said town of Helena, and the governor shall make public proclamation thereof; but if more votes shall have been cast reading " Capital Law disapproved " than were cast reading " Capital Law approved " then, and in that case, it shall be deemed, taken and held that section one of this act has been disapproved, and that the seat of government of the Territory of Montana has not been removed from said city of Virginia.

When seat of government deemed removed.

Who entitled to vote.

Sec. 4. Every qualified elector of the Territory of Montana shall be entitled to vote upon the approval or disapproval of the Capital Law in the form aforesaid; but he shall cast but one ballot at such election, and if he shall desire to vote for any candidate or candidates, and upon the said Capital

HeinOnline -- 1874 44 1874

Law, or any other question in due form submitted to him for his suffrage, or for any of them, his said ballot shall contain a complete list of what he desires to vote for or he shall be precluded from further voting at such election. What ballot to contain.

Sec. 5. That the votes cast for the approval or disapproval of this law shall be cast, counted, canvassed and returned in the same manner, and by the same persons and officers, and in the same form and way, as shall the votes for delegate in congress. Canvass of votes.

Sec. 6. If in the manner aforesaid this act shall be approved and the capital be so removed to said town of Helena, then, and in that case, it shall be the duty of the governor and other executive officers to cause the various executive offices and public archives of the territory [to] be removed to the said town of Helena. Duty of governor and other officers to remove archives.

Sec. 7. No person shall be precluded from voting upon the question of the approval or disapproval hereof, who is a qualified elector of the territory, by reason of the fact that he may offer to vote at some precinct other than where he may reside, who will take an oath before one or more of the judges of the election, that he is such elector and has not before voted thereon at said election. Elector may vote out of precinct where he resides.

Sec. 8. This act is hereby declared a public act, and its passage and publication in one newspaper, in this territory, of general circulation therein, before the first day of July, in the year one thousand eight hundred and seventy-four, shall be a sufficient notice to the electors of said territory that they will be called upon to vote for the approval or disapproval thereof, and no election or vote thereon shall be deemed invalid for want of further notice, but in addition thereto it shall be the duty of the respective county officers charged with issuing election notices and posting the same, to include therein in addition to what is now required by law, a notice Act declared public act.

HeinOnline -- 1874 45 1874

that at said election they will also be called upon to vote for the approval or disapproval of the Capital Law.

Repealing clause.

Sec. 9. All acts and parts of acts in conflict with this act are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its passage.

Approved February 11, 1874.

CIVIL PRACTICE ACT.

AN ACT to amend sections 56, 139, 140, 155, and 156 of an act approved January 12, 1872, entitled An Act to regulate proceedings in civil cases in the courts of justice of the Territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Sections amended.

Section 1. That sections fifty-six, one hundred and thirty-nine, one hundred and forty, one hundred and fifty-five, and one hundred and fifty-six of an act approved January 12, 1872, entitled An Act to regulate proceedings in civil cases in the courts of justice of the Territory of Montana, be amended to read as follows:

As to the answer of defendant.

May be general or specific.

"Sec. 56. The answer of the defendant shall contain a general or specific denial of each allegation of the complaint intended to be controverted by the defendant, and may contain a statement of any matter in avoidance, or a counter claim constituting a defence, or the subject matter of cross-complaint, which may entitle the defendant to relief against the plaintiff alone, or against a defendant or co-defendant."

That section one hundred and thirty-nine of said act be amended to read as follows:

HeinOnline -- 1874 46 1874

"Sec. 139. Action may be commenced and writs of attachment issued upon any debt for the payment of money or specific property, before the same shall have become due, when it shall appear by the affidavit, in addition to what is required in section one hundred and thirty-seven of this act (except the allegation that the debt is due), *First*, That the defendant is leaving, or is about to leave, this territory, taking with him or her property, moneys, or other effects which might be subjected to the payment of the debt, for the purpose of defrauding his creditors; or, *Second*, That the defendant is disposing of his property, or is about to dispose of his property, subject to execution, for the purpose of defrauding his creditors: *Provided*, That any judgment obtained under the provisions of this section shall be with a rebatement of the interest from the time said judgment is obtained until the time at which said debt would have become due; *and provided, also*, That the defendant may, by plea, put in issue the matter alleged in the affidavit herein required, and if the plaintiff fail to substantiate some one of the causes required to be alleged in said affidavit, the suit for debt or debts not due shall abate."

Attachment when debt not due.

Affidavit in such case.

Rebatement of interest.

That section one hundred and forty of the said act be amended to read as follows:

"Sec. 140. The writ shall be directed to the sheriff of any county in which property of such defendant may be, and require him to attach and safely keep all the property of such defendant within his county not exempt from execution, or so much thereof as be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, unless the defendant deposit the amount or give him security by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand besides costs, or in an amount equal to the value

Writ directed to sheriff of any county where defendant has property.

Defendant may give security.

HeinOnline -- 1874 47 1874

of the property which has been or is about to be attached; in which case to take such undertaking. Several writs of attachment may be issued at the same time to the sheriffs of the different counties: *Provided*, That in case one attachment shall be returned showing sufficient property attached, or undertaking given, to secure the plaintiff's demand with costs, all other writs of attachment issued in the same action may, by order of the judge of the court issuing the said writs, be returned to the proper clerk's office, and all levies made by virtue thereof released."

That section one hundred and fifty-five of said act be amended as follows:

Sheriff not to release attachment unless defendant give undertaking.

"Sec. 155. Before releasing said attached property, as aforesaid, the sheriff shall acquire an undertaking, executed by the defendant, and at least two sureties, residents and freeholders or householders in the county, to the effect that in case the plaintiff recover judgment in the action, defendant will, on demand, re-deliver such attached property to the proper officer, to be applied to the payment of the judgment, and that in default thereof the defendant and sureties will pay to the plaintiff an amount to be stated in the undertaking double the amount of the plaintiff's demand; and if any sheriff shall release any property held by him by virtue of a writ of attachment without taking such bond, or if he shall take an insufficient bond, he shall be liable for the debt secured by such attachment, and all damage incurred by the plaintiff."

Requisites of undertaking.

Liability of sheriff.

That section number one hundred and fifty-six of said act be amended to read as follows:

Defendant may move to discharge attachment.

"Sec. 156. The defendant may, also, at any time before judgment, apply, on motion, upon reasonable notice to the plaintiff, to the court in which the action was brought, or to the judge thereof, for a discharge of the attachment on the ground that

Grounds of motion.

HeinOnline -- 1874 48 1874

the writ was improperly or illegally issued, and the judge or court shall (if the cause be sufficient) discharge the same, and order the property held by virtue thereof to be released."

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved February 13, 1874.

CIVIL PRACTICE ACT.

AN ACT to amend An Act to regulate proceedings in civil cases in the courts of justice in the Territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Deposition of non-resident witnesses, how taken.

Sec. 1. When the testimony of any non-resident witness or witnesses shall be necessary in any civil cause depending in any court of law or equity in this territory, it shall be lawful for the party wishing to use the same, on giving to the adverse party or his attorney five days previous notice, together with a copy of the interrogatories intended to be put to such witness or witnesses, to sue out from the proper clerk's office a commission under the seal of the court, to be directed to any person as commissioner, or to any judge or justice of the peace, clerk of a court of record, or notary public of the county or city in which such witness or witnesses may reside, authorizing and requiring him to cause such witness or witnesses to come before him at such place and time as he may designate and appoint, and faithfully to take his, her, or their deposition or depositions upon all such interrogations as may be enclosed with, or attached to, such communication, both on the part of the plaintiff and the defendant and none others, and to certify the same when taken, together

HeinOnline -- 1874 49 1874

with the said commission and interrogations into the court in which such cause may be depending, with the least possible delay.

To be returned into court.

Sec. 2. Every examination and deposition which shall be taken and returned according to the provisions of this act, may be read in evidence in the cause in which it shall be taken, with the like effect as if such witness had been present and examined by parol in open court on the trial or hearing thereof.

May be read in evidence on trial.

Sec. 3. All depositions taken in pursuance hereof, when returned into court, may be read by either party on the trial of the cases to which they relate.

May be read by either party on trial.

Sec. 4. Such depositions, when taken as above provided, shall be certified to the officer taking the same, to the court, in a sealed envelope, directed to the clerk, and forward to him by mail or other usual channels of conveyance. Sections 482, 483 and 484 of chapter six of the Civil Practice Act, are hereby repealed.

Officer taking deposition to certify, and return same to clerk in sealed envelope, &c.

Sections Repealed.

Sec. 5. To render an appeal effectual for any purpose in any case, a written undertaking shall be executed upon the part of the appellant, by at least two sureties, to the effect that the appellant will prosecute his appeal with effect, and will pay all damages and costs which may be awarded against him on the dismissal or trial of the appeal, not exceeding three hundred dollars, or that sum shall be deposited with the clerk with whom the judgment or order was entered, to abide the result of the appeal; such undertaking shall be filed, or such deposit made, with the clerk within five (5) days after the notice of appeal is filed.

Undertaking necessary in all cases of appeal.

Requisites of undertaking.

Money may be deposited in lieu of undertaking.

When and where undertaking is filed or deposit made.

Sec. 6. On all cases where notices of intention to move for a new trial in accordance with the provisions of chapter ten of the civil practice act, entitled "new trial," shall have been given, the judge of the court, in which the trial shall have been had,

On motion for new trial proceedings may be stayed.

HeinOnline -- 1874 50 1874

may, upon such terms as in his opinion shall be just, make an order staying proceedings in the cases until the motion for new trial shall have been disposed of.

Execution not to issue after five years from judgment, except on notice to adverse party and leave of court.

Sec. 7. After the lapse of five years from the entry of judgment, an execution can only be issued by leave of the court, upon motion, with personal notice to the adverse party, unless he be absent, or non-resident, or can not be found, to make such service, in which case service may be made by publication or in such other manner as the court shall direct; such leave shall not be given unless it be established by the oath of the party, or other satisfactory proof that the judgment, or some part thereof, remains unsatisfied and due; but the leave shall not be necessary when the execution has been issued on the judgment within the five years, and returned unsatisfied in whole or in part.

When leave granted.

When leave unnecessary.

Allowance of costs for witnesses limited.

Sec. 8. In no case shall the fees of more than four witnesses be taxed against the party against whom judgment shall be given for costs, unless the courts shall certify that more than four witnesses were really necessary, in which case the clerk shall tax the costs of as many witnesses as the court shall so certify.

Section amended.

Sec. 9. Section 557 of the Civil Practice Act, is hereby amended by adding thereto as follows: *Provided*, however, that no allowance or charge shall be made for the attendance of witnesses, unless the witness shall make affidavit before the clerk of the number of days he or she actually attended, and of the distance he or she shall have traveled, and that such attendance was at the instance of one or both parties, or his, her, or their attorney.

Witness must make affidavit of attendance before clerk.

Clerk may make out fee-bill after final judgment.

Sec. 10. In all cases, after final judgment, it shall be lawful for the clerk to make out a tax bill of costs against the party incurring said costs, and certify the same under the seal of the court, which,

HeinOnline -- 1874 51 1874

being delivered to the sheriff of the proper county, he shall demand payment thereof from the person therein charged, and if payment shall not be made within twenty days after such demand, the sheriff shall levy the same on the goods and chattels, lands and tenements of the person so chargeable, and proceed thereon in all things as on a writ of execution.

Sheriff to collect fee-bill as in case of execution.

Sec. 11. And to the end that all persons chargeable with fees due to any sheriff, clerk, or any officer of any court in this territory, may certainly know for what the same is chargeable, none of the fees of any such officers shall be payable to any such officer until an itemized account of the same shall have been presented to the person chargeable with the same, and signed by the officer to whom the same are payable, or until a fee-bill shall have been issued by the clerk as above provided.

Party liable to pay costs to have itemized account of same.

Sec. 12. Section 197, of chapter four, of the Civil Practice Act, is hereby amended by adding thereto: "Either party shall have the right to have the whole jury sworn to answer questions as to their competency, in the first instance, and may examine them on any of the matters of challenge for cause.

Section amended.

Either party may have whole jury sworn and examine as to competency.

Sec. 13. Section 234, of chapter ten, of the Civil Practice Act, is hereby amended by striking out all after the word "affidavit" on third line thereof.

Section 234 amended.

Sec. 14. Section 235, of chapter ten, of the Civil Practice Act, is hereby amended so as to read as follows: Section 235. The party intending to move for a new trial, shall, within three days after the rendition of the verdict of the jury, or within ten days after receiving written notice of the filing of the report of referee or decision of the court, if rendered or decided during the term, and if rendered or filed in vacation, within ten days after receiving written notice of the filing thereof, shall give by himself or his counsel the points in writing, particularly specifying the grounds of such motion, and

Section amended.

Time in which notice must be given in moving for new trial.

Requisites of notice.

HeinOnline -- 1874 52 1874

shall furnish the judge with a copy of the same, and all proceedings shall thereupon be stayed until such motion can be heard by the court; *Provided*, that the same be heard at the same time at which the trial is had. On the agreement (argument) reference may be made to the pleadings, evidence and minutes of the court, and all papers used or introduced in the case. If the application be made upon affidavits filed, the adverse party may use counter affidavits at the hearing; any counter affidavits shall be filed at least one day previous to the hearing. The application for a new trial shall be made at the earliest practicable period, after filing the affidavits or notice of the motion. Exceptions taken to opinions or decisions of the district court, overruling motions in arrest of judgment, and motions for new trials shall be allowed, and the party excepting may assign for error any opinion so excepted to.

Proceedings stayed until motion heard, but must be heard at same time of trial.

Argument of motion.

Use of affidavits on hearing motion.

Exceptions and assignments of error.

Sec. 15. All bills of exceptions shall be reduced to form (unless noted by the clerk) and signed during (the) time in which the same is tried, except in cases where the counsel consent, or the judge, by an entry on the record, direct that it may be prepared in vacation, and signed *nunc pro tunc*. The bill of exceptions must be signed by the judge who tried the cause, and if he has inadvertantly omitted to sign a bill of exceptions, he may, on motion, be permitted to do so, although his term of office has expired or said office has otherwise become vacant.

Exceptions, how taken and preserved.

Exceptions signed by the judge.

Sec. 16. When a motion for new trial is heard and decided upon the minutes of the judge, and an appeal is taken from the decision, a bill of exceptions must be settled in the usual form, upon which the agreement (argument) of the appeal must be had.

When appeal taken on decision from judges minutes on motion for new trial, exceptions must be settled.

Sec. 17. When any sheriff, constable, or coroner serves more than one process or notice in the same direction, not requiring more than one jour-

Officer serving more than one service in same direction, to charge mileage as one journey.

HeinOnline -- 1874 53 1874

ney from his office, he shall charge for and receive mileage only for the most distant service.

Costs on judgment according to law.

Sec. 18. Upon the dismissal or other disposition of an action in which the court has jurisdiction of the subject matter of the action, it shall be the duty (of) the court to render such judgment for costs as is according to law.

Costs in probate court taxed in favor of prevailing party.

Sec. 19. In all cases adjudicated in the probate court, the costs shall follow the judgment, without reference to the amount or value of the property in controversy, and such costs shall be taxed by said court in favor of the prevailing party.

Sections amended.

Sec. 20. That sections 34, 36, 45, 48, 138, 253, and 271, of an act entitled an "act to regulate proceedings in civil cases in courts of justice of the territory of Montana," be amended so as to read as follows:

Defendant served where found. Who may serve summons.

Sec. 34. The summons shall be served by the sheriff of the county where the defendant is found, or by his deputy, or by a person specially appointed by him, or appointed by a judge of the court in which the action is brought, or by any white male citizen of the United States over twenty-one years of age, who is competent to be a witness on the trial of the action, except as hereinafter provided. When summons is served by the sheriff or his deputy, it shall be returned with the certificate or affidavit of the officer of its service, to the office of clerk from which the summons issued. When the summons is served by any other person as before provided, it shall be returned to the office of the clerk from which it issued, with the affidavit of such person of its service.

Return of the summons after service.

Manner in which summons shall be executed.

Sec. 36. A summons shall be executed, except as otherwise provided by law, as follows: First, by reading the writ to the defendant; or, second, by delivering to him a copy of the writ; or, third, by leaving a copy of the writ at the usual place of abode

HeinOnline -- 1874 54 1874

of the defendant, with some member of his family over the age of fifteen years; or, fourth, when there are several defendants residents of the same county, by delivering to the defendant who shall be first summoned a copy of the writ, and to such as may be subsequently summoned, a copy of the writ, or by leaving such copy at the usual place of abode of the defendant, with some member of his family over the age of fifteen years. If the suit be (brought) against a corporation, service shall be had by delivering a copy of the writ to the president, or other head of the corporation, or to the secretary, cashier, or managing agent thereof.

On a corporation.

If suit be against a foreign corporation or a non-resident joint stock company, or association doing business within this territory, service shall be had by delivering a copy of the writ to an agent, cashier, or secretary thereof.

On foreign corporation.

If the suit be against a minor under the age of fourteen years, service shall be had by delivering a copy of the writ to such minor, personally, and also to his or her father, mother, or guardian, or if there be none in the territory, then to any person having the care or control of such minor, or with whom he or she resides, or in whose service he or she is employed.

On a minor under fourteen years of age.

If the suit be against a person judicially declared to be of an unsound mind, or incapable of conducting his (or her) own affairs, and for whom a guardian has been appointed, service shall be had by delivering a copy of the writ to such guardian. Copies of papers attested may be furnished by the clerk to adverse parties, and the charges therefor taxed as costs in the case.

On person of unsound mind.

Copies of papers to adverse party.

Sec. 45. From the time of the serving of a summons in a civil action, the court shall be deemed to have acquired jurisdiction and to have control of all the subsequent proceedings. A voluntary appear-

When court deemed to acquire jurisdiction.

HeinOnline -- 1874 55 1874

ance of a defendant shall be equivalent to personal service of the summons upon him. If any plaintiff shall allege that there are, or that he verily believes that there are, persons interested in the subject matter of the complaint, whose names he cannot insert therein because they are unknown to him, and shall describe the interest of such persons and how derived, so far as his knowledge extends, the court, or the judge thereof, in vacation, shall make an order, as in case of non-residents, of publication of the summons, reciting, moreover, the substance of the allegations of the complaint in relation to the interest of such unknown parties, and after the completion of service by such publication, the court shall have jurisdiction of such person, and any judgment rendered in the action.

Voluntary appearance equivalent to personal service.

Unknown parties in interest may be brought into court by publication.

The action shall apply to and conclude such persons with respect to such interest in the subject matter of the action.

Interests of such persons, how affected.

Sec. 48. The only pleading on the part of the plaintiff shall be the complaint, demurrer, or replication to the defendant's answer; and the only pleadings on the part of the defendant shall be a demurrer to the complaint, or a demurrer to the replication, or an answer to the complaint. The demurrer or answer to the defendant, and the demurrer or replication of the plaintiff shall be filed with the clerk.

Pleadings on part of plaintiff.

Pleadings on part of defendant.

Sec. 138. Before issuing the writ the clerk shall require a written undertaking on the part of the plaintiff, with two or more sufficient sureties, to be approved by the clerk, in a sum not less than the amount claimed by the plaintiff, to the effect that if the defendant recover judgment, or if the court shall finally decide (that) the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages he may sustain by reason of the wrongful su-

Clerk shall require written undertaking (in attachment)

Requisites of the undertaking.

HeinOnline -- 1874 56 1874

ing out of the attachment, not exceeding the sum specified in the undertaking.

Said sureties may be required to justify before the clerk of the court, to the effect that each for himself is worth the amount specified in the undertaking, over and above his debts, liabilities and property by law exempt from excution in the Territory of Montana. *Provided*, That when the amount claimed by the plaintiff shall be one thousand dollars, or any sum under one thousand dollars, the said undertaking shall be in a sum not less than double the amount claimed.

Justification of sureties.

If amount claimed be $1,000 or less bond to be double.

Sec. 253. The execution may be made returnable at any time not less than ten nor more than sixty days days after its receipt by the sheriff to the clerk with whom the judgment roll is filed. When the execution shall have been returned it shall be the duty of the clerk to attach the same to the judgment roll. If any real estate be levied upon, the clerk shall record the return to the execution at large, and certify the same under his hand as true copies, in a book to be called the "execution book," which book shall be indexed with the names of the plaintiffs and defendants in execution alphabetically arranged and kept open at all times during office hours for the inspection of the public without charge, and shall be evidence of the contents of the originals, whenever they, or any part thereof, may be destroyed, lost or mutilated.

Return of execution.

Clerk to attach execution to judgment when returned.

If real estate levied on, clerk to record return in "execution book."

"Execution book," how kept

Sec. 271. Before the sale of property on execution, notice shall be given as follows: First, in case of perishable property by posting written notice of the time and place of sale in three public places of the township or city where the sale is to take place, for such time as may be reasonable, considering the character and condition of the property. Second, in case of other personal property

Notice of sale of personal property under execution.

HeinOnline -- 1874 57 1874

by posting a similar notice in three public places in the township or city where the sale is to take place, not less than five nor more than ten days successively. Third, in case of real property, by posting a similar notice, particularly describing the property, for twenty days successively, in three public places of the township or city where the property is situated, and also where the property is to be sold, and publishing a brief notice of such sale once a week for the same period in some newspaper published in the county, if there be one, which notice shall be substantially as follows:

Notice of sale of real estate under execution.

SHERIFF'S SALE.

JOHN DOE, *vs.* RICHARD ROE.

Form of notice.

To be sold at sheriff's sale on the —— day of ————, 187–, at ———— [Here insert a brief description of property.]

Signed, JOHN DOE, *Sheriff.*

Any sheriff publishing a notice not in accordance with this form, and which shall cost more than such a notice, shall not be entitled to any costs for the publication of the same, but shall be personally liable for the payment of such publication.

Penalty if sheriff not follow form.

Sec. 21. There shall be kept in the recorder's office of the county recorder of each county, a book called "attachment book," in which shall be entered by such recorder, in alphabetical form, the names of any person or persons against whom any writ or notice of attachment has been filed in his office; there shall also be entered in said book the time such writ was filed. Such entries shall be made under appropriate heads for that purpose. For making such entry the recorder shall receive twenty-five cents, to be paid by the plaintiff in the action,

"Attachment book," kept in recorder's office —entries in same.

Fees of clerk th refor.

HeinOnline -- 1874 58 1874

and taxed and allowed to him as other costs and disbursements in the action.

Approved February 13th, 1874.

CRIMINAL PRACTICE ACT.

AN ACT to amend an act entitled "An Act to regulate proceedings in criminal cases in the courts of justice in the Territory of Montana," approved January 12th, 1872.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That section six of chapter one, of an act entitled "An Act to regulate proceedings in criminal cases in the Territory of Montana," approved January 12th, 1872, be amended so as to read as follows: Section amended

Sec. 6. Justices of the peace shall have jurisdiction of all misdemeanors committed in the county in which they may be qualified to act, when the punishment therefor does not exceed a fine of one hundred dollars, or imprisonment in the county jail six months, or by both such fine and imprisonment. Jurisdiction of justices in misdemeanors.

The probate court shall have jurisdiction of all misdemeanors for the county in which the judge thereof shall be qualified to act, when the punishment therefor does not exceed a fine of five hundred dollars, or imprisonment for six months in the county jail, or by both such fine and imprisonment. Jurisdiction of probate court in misdemeanors.

The district court shall have jurisdiction of all offences not cognizable in the probate or justice of the peace courts, and of all common law offences. Jurisdiction of district court in criminal cases.

Sec. 2. That all acts and parts of acts in conflict with this act, be and the same are hereby repealed. Acts repealed.

HeinOnline -- 1874 59 1874

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved February 13, 1874.

CRIMINAL PRACTICE ACT.

AN ACT to amend section 422 of the "Criminal Practice Act," passed January 12th, 1872.

Be it enacted by the Legislative Assembly of the Territory of Montana :

Section amended.

Section 1. That section 422 of an act entitled, "An act to regulate proceedings in criminal cases in the courts of justice in the territory of Montana," approved January 12th, 1872, be so amended as to read as follows :

Witness in criminal case make affidavit to fees.

Sec. 422. Witnesses in criminal cases shall make out a bill under oath, of the fees to which they are entitled in each case, and file the same with the clerk of the district court, and the county shall pay such clerk for the services in this and the preceding section. *Provided*, that no witness shall receive fees in any more than one criminal case on the same day during the same term of court.

To receive fees only in one case on same day.

Approved February 12th, 1874.

HeinOnline -- 1874 60 1874

CRIMINAL LAWS.

AN ACT to regulate proceedings in cases of certain misdemeanors.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. No justice of the peace or other magistrate in this territory, shall acquire jurisdiction over the person of a defendant, to finally try such defendant, by reason of the complaint of such defendant made against himself, nor by reason of any complaint which such defendant may procure to be made against himself.

Magistrate not to acquire jurisdiction in misdemeanor when defendant accuses self.

Sec. 2. This act shall be in force from and after its passage.

Approved February 3d, 1874.

CRIMINAL LAWS.

AN ACT defining certain offences therein named, and providing a punishment therefor.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. If any person within this territory, at any election, when the question of the location of the seat of government is by law submitted to the electors for their approval or rejection, shall offer to vote thereon, knowing that he is not qualified so to vote, according to the law now in force, defining the qualifications of electors in this territory, or who shall have voted once before at said election thereon, the person or persons so offering to vote thereon, whether his vote is received or rejected,

Penalty for illegal voting at election when question of locating seat of government at issue.

HeinOnline -- 1874 61 1874

shall be deemed guilty of a misdemeanor, and being thereof convicted, shall be punished by a fine not less than one hundred nor more than one thousand dollars, and by imprisonment, not less than one nor more than twelve months, in the discretion of the court.

Penalty for receiving, returning or certifying, &c., illegal vote.

Sec. 2. If any judge or clerk of election, or county clerk, or commissioner, or any other officer or person charged by the laws now in force with any duty, at such election, shall knowingly receive the vote of any person not qualified to vote at such election, or shall make any forged, false, or fraudulent returns, or certify to such returns, or shall thereafter alter any true returns, or wilfully miscount, change, alter or vary, any poll book, list, vote, or return, or shall certify to any fact not true, or shall do any other thing whatever to defeat the actual and true return and count of all lawful votes cast on that question, and none others than such lawful votes, or shall do or perform any act whatever, with the intent, and for the purpose of procuring any other person to make any false return, or count, or certificate, every such person so offending shall be deemed guilty of a felony, and being thereof convicted, shall be punished by imprisonment in the territorial penitentiary, not less than one year, nor more than three years, and shall be forever thereafter incapable of holding any office of trust, honor, or profit, in the territory of Montana.

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved February 12th, 1874.

HeinOnline -- 1874 62 1874

COUNTY COMMISSIONERS.

AN ACT to amend sections 23 and 25 of chapter XXI. of "An act re-enacting, codifying and revising the general and permanent laws of Montana Territory," approved January 12th, 1872.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That section twenty-three of chapter twenty-one of an act revising, re-enacting and codifying the general and permanent laws of Montana territory, approved January 12th, 1872, be amended to read as follows:

Section amended.

Sec. 23. No account shall be allowed by the board of county commissioners, unless the same be made out in separate items, and the nature of each item stated; nor unless the same be verified by affidavit, showing that the said account is just and wholly unpaid; and if the same be for official services for which no specified fees are fixed by law, the time actually and necessarily devoted to such service shall be stated; but nothing in this section shall prevent such board from disallowing any account in whole or in part, when so rendered and certified.

County commissioners not to allow accounts unless verified.

Sec. 2. That section twenty-five of said act be amended to read as follows:

Sec. 25. Whenever a claim of any person against a county shall be disallowed in whole or in part, or when any tax-payer of the county shall feel aggrieved by any allowance made by the board as excessive, unjust to the county, or illegal, such person may appeal from the decision of such board to the district court, for the county, by causing a written notice of such appeal to be served on the clerk of such board, within thirty days after the making of such decision or allowance, and executing a bond to such county, with surety to be approved by the

Appeal in case of disallowance of account.

HeinOnline -- 1874 63 1874

clerk of such board, conditioned to prosecute such appeal to effect, and to pay all costs that shall be adjudged against the appellant.

Approved February 13th, 1874.

COUNTY COMMISSIONERS.

AN ACT authorizing the county commissioners of the several counties to dispose of the surplus moneys in the different county funds.

Be it enacted by the Legislative Assembly of the Territory of Montana:

County commissioners may transfer surplus funds, &c.

Exception as to school fund.

Section 1. The county commissioners of the several counties are hereby authorized to transfer all surplus moneys now on hand in any of the several county funds, except the school fund, to such fund or funds as they may deem for the best interest of their respective counties, or to appropriate said surplus moneys to the payment of the outstanding indebtedness of their respective counties. *Provided*, that no moneys belonging to the school fund shall be taken therefrom except for school purposes.

Sec. 2. All acts and parts of acts in conflict with this act are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after the first day of March, A. D. eighteen hundred and seventy-four.

Approved February 13th, 1874.

HeinOnline -- 1874 64 1874

COSTS — FEES.

AN ACT to curtail certain expenses.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That the county commissioners of the several counties of this territory, when any bill of costs of any justice of the peace, constable, marshal, sheriff, or other officer of this territory, or of any county, township, or precinct therein is presented to them for fees in any case of misdemeanor not prosecuted by indictment, for allowance, shall not allow the same, unless in their judgment it appeared at the time such course was commenced and prosecuted and said fees incurred to said officers, that the public welfare and the good order and peace of the territory would be promoted by such prosecution; nor shall they, in any event of conviction, allow any fee or cost of any officer out of the public funds until they are satisfied that every reasonable effort has been exhausted to collect out of the estate of the defendant, or defendants, convicted (of) such fees.

Allowance of fees, in case of misdemeanor, when case prosecuted without indictment.

Defendant if convicted to pay costs.

Sec. 2. The dieting of prisoners per day shall not hereafter exceed two dollars per day, and it shall not be in any sum exceeding what the county commissioners believe to be the actual value thereof, and the minimum price fixed by the act approved April 28, 1873, entitled "An Act to establish and regulate the fees of sheriffs in the Territory of Montana," is amended accordingly.

Allowance for dieting prisoners.

Sec. 3. That hereafter the fees of the probate judge herein specified shall be as follows: Taking proof of a codicil, credit proved substantially, $1.00; examining and approving each inventory, sale bill, or account current, filed by executor or adminis-

Fees of probate judge.

HeinOnline -- 1874 65 1874

trator, $1.00; entering the settlement of executors and administrators on the order book, $1.00; allowing or disallowing demand against an estate, $1.00; issuing subpœna under seal, 50 cents; every original writ, under seal, not otherwise provided for, 50 cents; precept for jury, 50 cents; official certificate and seal, 75 cents. An act entitled "An Act to regulate and establish the fees of probate judge and clerk thereof, approved May 3, 1873," is hereby amended accordingly.

Act repealed.

Sec. 4. No county commissioner, or other auditing officer, shall acquire, in any manner, against any corporate municipality, or against the territory, any claim, except for official compensation fixed by law, when such claim is one which is to be audited by the board, or body, or office which he holds, or of which he is a member, but in the hands of such person, or his assignee, or partner therein, the same shall be wholly void.

Auditing officer to have no interest in claim audited.

Sec. 5. This act shall take effect and be in force from and after its passage.

Approved February 13, 1874.

COUNTIES AND COUNTY BOUNDARIES.

AN ACT to amend section seven, of chapter twenty, of an act entitled "An Act revising, re-enacting, and codifying the general and permanent laws of Montana Territory."

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That all that part of Montana Territory embraced within the following boundaries be, and the same is hereby, declared to be Meagher county, to-wit: Commencing in the middle of the main channel of the Missouri river, opposite the

Boundaries of Meagher county defined.

HeinOnline -- 1874 66 1874

mouth of Sixteen Mile creek; thence easterly along the center of the main channel of said Sixteen Mile creek four miles; thence north to the northern boundary of Gallatin county; thence due east along said line to the one hundred and ninth parallel of longitude; thence due north along the one hundred and ninth parallel of longitude to a point due east of the middle of the main channel of the Missouri river, opposite to the mouth of Deep creek or Smith's river; thence west to the middle of the channel of the Missouri river, opposite to the mouth of Deep creek or Smith's river; thence southerly up the middle of the main channel of the Missouri river to the place of beginning.

Northern boundary of Gallatin county defined.

Sec. 2. That the northern boundary of Gallatin county shall be as follows, to-wit: Commencing at a point in the middle of the Missouri river, opposite the mouth of Sixteen Mile creek, thence easterly up the Main channel of said Sixteen Mile creek four miles; thence north to the south boundary of Meager county; and thence due east along said line to the one hundred and ninth parallel of longitude.

Sec. 3. This act to take effect and be in force from and after its passage.

Approved February 13, 1874.

HeinOnline -- 1874 67 1874

COUNTIES — MADISON, BEAVERHEAD.

AN ACT to attach to the counties of Madison and Beaverhead that portion of the public domain described in the act of Congress, approved February 17, 1873, entitled "An Act to readjust the western boundary of Dakota Territory."

Be it enacted by the Legislative Assembly of the Territory of Montana:

Attaching certain portion of the public domain to the county of Madison.

Section 1. That that portion of the public domain that is described in the act of Congress, approved February 17, 1873, entitled "An Act to readjust the western boundary of Dakota Territory," lying east of an extension due south of the line dividing the counties of Madison and Beaverhead, be, and the same is hereby, attached to and shall hereafter comprise a portion of the county of Madison.

Attaching certain portion of the public domain to the county of Beaverhead.

Sec. 2. That all the remaining portion of said public domain, lying west of said line, be, and the same is hereby, attached to and shall hereafter comprise a portion of the county of Beaverhead.

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved February 7, 1874.

COUNTY ORDERS.

AN ACT to amend section 94, of chapter 21, of an act entitled "An Act revising, re-enacting, and codifying the general and permanent laws of Montana Territory," approved January 12, 1872.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section amended.

Section 1. That section 94, of chapter 21, of an act entitled "An Act revising, re-enacting, and codifying the general and permanent laws of Mon-

HeinOnline -- 1874 68 1874

tana Territory," approved January 12, 1872, be amended so as to read as follows:

(Sec. 94.) County orders, properly attested, shall be entitled to preference, as to payment, according to the order of time in which they may be presented to the county treasurer, but when two or more orders are presented at the same time, preference shall be given to the order of the oldest date.

County orders paid as presented—exception.

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved February 9, 1874.

COUNTIES AND COUNTY OFFICERS.

AN ACT amending "An Act revising, re-enacting and codifying the general and permanent laws of Montana Territory, in relation to county and county officers," approved January, 12th, 1872.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That section twenty-eight, of an act revising, renacting and codifying the general and permanent laws of Montana territory, in relation to counties and county officers, approved January 12th, 1872, be amended so as to read as follows:

Sections amended.

Sec. 28. The board of county commissioners at their annual March session, or oftener, if they deem it necessary, shall carefully examine the county orders returned by the county treasurer, by comparing each order with the record of orders in the clerk's office. They shall cause to be entered on said record, opposite to the entry of each over issued, the date when the same was cancelled; they shall also make a list of the orders so cancelled, specifying the number, date, amount, and the per-

Commissioners to examine order returned by treasurer at March term annually.

Date of cancellation, entered, &c.

HeinOnline -- 1874 69 1874

son to whom the same was payable, and enter the same on the journal of the board. They shall also cause to be cancelled all county orders that have remained one year or more uncalled for in the county clerk's office, the same to be cancelled in the same manner as other county orders. Also at the same time the county treasurer shall deliver over to the board of county commissioners, all warrants or vouchers that he may have in his possession, for moneys disbursed by him as such treasurer, and the county commissioners shall receipt for the same, and make out and sign a list thereof, specifying the number, date, and amount of warrant or voucher, to whom payable, and where paid or cancelled, and the county clerk shall record the same in the journal of the board.

Orders uncalled for after one year cancelled.

Treasurer to deliver to commissioners vouchers.

Commissioners to receipt for vouchers, particularly describing same.

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved February 13th, 1874.

COUNTY OFFICERS—REVENUE.

AN ACT to amend "An Act in relation to counties and county officers," approved July 12th, 1872.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That section one, of an act entitled "An Act relating to counties and county officers," approved January 12th, 1872, be so amended as to read as follows:

The county commissioners of the different counties of this territory may set apart from the county part of the revenue of their respective counties a certain sum, annually, for the payment of the out-

Part of revenue may be set aside to pay bonds, &c.

HeinOnline -- 1874 70 1874

standing county bonds and the interest thereon; *Provided*, That the sum so set apart shall not exceed five mills of the number of mills levied for county tax. Said fund shall be known as the "Sinking Fund," to pay said bonds and interest, and which bonds shall be paid in the order in which they were issued, and whenever a sufficient sum shall have accumulated in said sinking fund to pay any bond, over and above the sum required to pay the annual interest on the outstanding bonds, it shall be the duty of the treasurer to post upon the door of his office a notice, that there is money in his hands to pay such bond, designating it by the number, date, amount and the name of the payee, and from the date of such notice the interest of such bond or bonds shall cease, and it shall be the duty of the treasurer to fill a true copy of such notice in the office of the clerk of his county, and the clerk shall file and preserve the same in his office, which notice, or a duly authentic copy thereof, shall be *prima facie* evidence of such filing.

County treasurer to post notice of bonds when payable.

Sec. 2. All acts and parts of acts, in conflict with this act, are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved January, 24th, 1874.

COUNTY POOR.

AN ACT entitled An Act to amend chapter 50 of the general and miscellaneous laws of Montana Territory, approved January 12, 1872.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That section 7 of chapter 50 of the general and miscellaneous laws, approved January 12, 1872, be amended so as to read as follows:

HeinOnline -- 1874 71 1874

"Sec. 7. When the application is made by any pauper to the board of county commissioners of any county in this territory for relief, it shall be necessary for said commissioners to require of said pauper satisfactory evidence that he (or she) has been a resident of the county for sixty days immediately preceding the day upon which such application is made. The term "residence" as used in this section shall be taken and considered to mean the actual residence of the party, or the place where he (or she) was employed, or in case he (or she) was in no employment, then it shall be considered and held to be the place where he (or she) made it his (or her) home."

Duty of Commissioners when pauper applies for relief.

Term residence defined.

Sec. 2. That section 8 of same chapter as aforesaid be amended so as to read as follows:

"Sec. 8. If any person shall become chargeable in any county in which he (or she) did not reside at the commencement of the sixty days immediately preceding his (or her) becoming so chargeable, he (or she) shall be duly taken care of by the county commissioners where he (or she) may be found, and it shall be the duty of the county clerk of the county commissioners of such county, to send notice by mail to the clerk of the county commissioners of the county in which such person resided as before stated, that said person has become chargeable as a pauper, and requesting the authorities of said last named county to remove said pauper forthwith, and to pay the expenses incurred in taking care of him (her, or them). If any such pauper, by reason of sickness or disease, or by neglect of the county commissioners to which said county he (or she) belongs, or for any cause, cannot be removed, then the county taking charge of such pauper may sue for, and recover from the county to which he (or she) belongs, in any proper action before any court having competent jurisdiction, the sum expended

Non-resident pauper becoming chargeable.

County clerk to notify clerk of pauper's county

Pauper removed to his county

County incurring expense may sue county liable.

HeinOnline -- 1874 72 1874

for and on behalf of such pauper or paupers, and in taking care of the same, and any judgment so recovered by virtue of this act shall be paid out of the poor-fund of the county to which said pauper or paupers are chargeable."

Sec. 3. That section 9 of the same chapter as aforesaid be amended as to read as follows: Sections amended.

"Sec. 9. If any person shall bring and leave, or cause to be brought and left, any pauper or paupers, in any county in this territory, wherein such pauper is not lawfully settled, or shall bring and leave, or cause to be brought and left, in any county in this territory, any person who from any disability will become charageable upon said county, with the intent to make such pauper or paupers a county charge, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one hundred dollars nor less than twenty-five dollars, and that all fines collected under and by virtue of this act shall be paid into the poor-fund of the county in which such pauper is brought. Penalty for bringing and leaving pauper

Sec. 4. That all acts and parts of acts in conflict with this act be and the same are hereby repealed. Repealing clause.

Sec. 5. This act shall take effect and be in force from and after its passage.

Approved February 13, 1874.

DEAF, MUTE, AND BLIND CHILDREN.

AN ACT to provide for the education of deaf, mute and blind children.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. The governor and superintendent of public instruction of this territory are hereby au-

HeinOnline -- 1874 73 1874

thorized to contract with any suitable institution in any state or territory of the United States, for the education of any deaf, mute or blind child between the ages of eight and sixteen years, who is actually a resident of this territory, at an expense to the territory of not more than three hundred dollars per annum for each such child, and for a term not exceeding four years for each such child, and upon the certificate of the said governor and superintendent of public instruction that such contract has been made, and that any such child is receiving instruction in such institution, the territorial auditor shall draw his warrant on the territorial treasurer for the payment of the fees of such institution in accordance with the terms of such contract.

Education of deaf, mute and blind children; governor and superintendent of public instruction to contract for.

Territorial auditor to draw warrant to pay expenses of.

Sec. 2. Whenever the parent or guardian of any deaf, mute or blind child, between the ages of eight and sixteen years, and actually a resident of this territory, shall furnish to the governor and superintendent of public instruction of the territory satisfactory evidence that such child has been placed in a proper institution, either public or private, for the education of such child, it shall be the duty of said governor and superintendent of public instruction to certify such fact to the territorial auditor, who shall thereupon draw his warrant upon the treasurer of the territory for the fee of such institution annually, semi-annually or quarterly as may be required by the rules of such institution, subject to the limitations, as to amount and time for each scholar as prescribed in the preceding section. *Provided, however*, That in no case shall any warrant be drawn for the education of such child for a period longer than such child shall remain a pupil of such institution; and that a child once placed in any such institution shall not be entitled to the aid

When child in proper institution, governor and superintendent of public instruction to certify to auditor.

How warrant shall be drawn.

HeinOnline -- 1874 74 1874

provided for in this act, if such child be transferred to any such other institution without the consent of the governor or superintendent of public instruction shall have first been obtained to such transfer for good and sufficient cause shown.

Child once placed in institution not to be transferred without consent, etc.

Sec. 3. *Provided*, That the provisions of this act shall not apply to any deaf, mute or blind child whose parents, in the judgment of the governor and superintendent of public instruction, are amply able to so educate such child; nor shall they apply to any child whose estate is amply sufficient to care for and educate such child.

Provisions of this act not to apply to others than indigent children.

Sec. 4. This act shall take effect and be in force from and after its passage.

Approved February 13th, 1874.

DEPUTY DISTRICT CLERKS.

AN ACT to authorize the appointment and qualification of deputy clerks of the district court.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That the clerks of the district of the several counties within this territory may, with the approval of the judge of the district court, within their several judicial districts, appoint one or more deputies, which shall be evidenced by a certificate thereof, signed by such clerk and approved by said judge, and entered upon the journals of their respective courts, which deputy shall continue during the pleasure of the principal, and every principal may take such bond and security from his deputy as he may deem necessary to secure the discharge of his duties; and the principal shall in all cases be

Appointment of deputy district clerks.

Bond of deputy

Principal liable for acts of deputy.

HeinOnline -- 1874 75 1874

answerable and liable for the neglect, default, or misconduct in the office of his deputy.

Sec. 2. That every such deputy shall, previous to entering upon the duties of his appointment, take an oath faithfully to perform all the duties thereof, which oath shall be entered on the journal of said court, and when so qualified, said deputy may do and perform all the duties appertaining to the office of his principal.

Oath of deputy.

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved February 4th, 1874.

ELECTIONS.

AN ACT amending an act entitled "An Act revising, re-enacting, and codifying the general and permanent laws of Montana Territory," approved January 12, 1872.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That section one, of chapter twenty-three, of an act entitled "An Act revising, re-enacting, and codifying the general and permanent laws of Montana Territory," approved January 12, 1872, be so amended as to read as follows:

Section Amended.

Sec. 1. That all male citizens of the United States, above the age of twenty-one years, and all male persons of the same age, who shall have declared their intention of becoming citizens, and who, under existing laws of the United States may ultimately become citizens thereof, shall be deemed electors of this territory, and be entitled to vote for delegate to congress, and for territorial, county, and precinct officers: *Provided*, they shall have resided in the territory six months, and in the county where

Qualification of electors.

HeinOnline -- 1874 76 1874

they may offer to vote thirty days next preceding the day of election.

Sec. 2. All acts and parts of acts in conflict with this act are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved February 13, 1874.

ELECTIONS.

AN ACT to amend section 32 and section 33, of chapter 23, of an act entitled "An Act revising, re-enacting, and codifying the general and permanent laws of Montana Territory," approved January 12, 1872.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That section 32, of chapter 23, of an act entitled "An Act revising, re-enacting, and codifying the general and permanent laws of Montana Territory, approved January 12, 1872, be so amended as to read as follows: Section amended.

Sec. 32. Where two or more counties are united in a council or representative district, or for the election of a district attorney, or any other officer, the secretary of the territory, immediately after all the votes shall be certified and transmitted to him, as provided in section twenty-nine of this chapter, shall examine the same, as provided in section twenty-nine for the votes to delegate to congress, and shall transmit by mail to the person found to be elected as such district officer a certificate of election, sealed with the seal of the territory. Returns of election of district officer of district of two or more counties made to secretary of territory. Secretary to make out and transmit certificate of election.

Sec. 2. That so much of section 33, of said chapter 23, as provides compensation to county officers for attending to canvass votes for district officers, and all other acts and parts of acts, in con- Section repealed.

HeinOnline -- 1874 77 1874

flict with the provisions of this act, be, and the same are hereby, repealed.

Sec. 3. This act shall be in force from and after its passage.

Approved February 7, 1874.

ELECTIONS.

AN ACT to amend section 51, of chapter 23, of "An Act revising, re-enacting, and codifying the general and permanent laws of Montana Territory," approved January 12, 1872.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That section 51, of chapter 23, of "An Act revising, re-enacting, and codifying the general and permanent laws of Montana Territory," approved January 12, 1872, be amended so that it shall read as follows:

Sheriff to administer oath to judges of election.

Sec. 51. It is hereby made the duty of the sheriff, at the time he delivers the poll-books, as provided in section (8) of this act, to administer the oath, as provided in section (9) of this act, to one of the judges of the election, and such judge may administer the oath to the other judges and clerks of such election; in case such judges fail to serve at such election, either of the other judges may administer such oath.

Judges to administer oath when.

Sec. 2. That this act shall take effect and be in force from and after its passage.

Approved January 21, 1874.

HeinOnline -- 1874 78 1874

FEES.

AN ACT to amend an act entitled "An Act to amend an act to provide for and regulate the rate of charges for the publication of legal documents." Approved December 28th, 1871.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That section one of an act to amend an act entitled "An Act to provide for and regulate a rate of charges for the publication of legal documents, approved December 28th, 1871, be amended so as to read as follows: Section amended.

Sec. 1. Publishers of newspapers in this territory shall be entitled to the following fees for publication of legal advertisements: For the first insertion of each folio of one hundred words, two and one-half dollars; for each subsequent insertion, one dollar and fifty cents. Fees for publication of legal documents.

Sec. 2. All acts and parts of acts in conflict with this act be and the same are hereby repealed. Repealing clause.

Sec. 3. This act to take effect and be in force from and after its passage.

Approved February 13th, 1874.

FEES.

AN ACT to establish the fees of Territoral Treasurer and Auditor.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That the territorial treasurer shall receive a salary of fifteen hundred dollars a year, which shall be paid quarterly, out of the territorial treasury, by warrant on the general fund. Salary of territorial treasurer.

HeinOnline -- 1874 79 1874

Salary of territorial auditor.

Sec. 2. That the territorial auditor shall receive a salary of fifteen hundred dollars a year, to be paid in the same manner as the treasurer is paid.

Acts repealed.

Sec. 3. That all acts and parts of acts conflicting with this act are repealed.

Sec. 4. That this act shall take effect from and after its passage.

Approved February 13th, 1874.

INSANE.

AN ACT to provide for the custody, maintenance, and treatment of the insane.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Governor authorized to contract for keeping insane.

Section 1. That the governor be and he is hereby authorized and empowered to contract with the directory of St. Vincent's Hospital, in the town of Helena, or at the directory of any other hospital in this territory, for the custody, maintenance, and treatment of all insane persons in the Territory of Montana, for a length of time not to extend beyond the regular session of the legislative assembly.

Territoral auditor to draw warrant to pay for keeping insane.

Sec. 2. The governor shall, upon the application of the said directory, at the end of each quarter, certify to the territorial auditor the amount due for the custody, maintenance, and treatment of such insane persons; and it shall be the duty of the territorial auditor to draw his warrant upon the territorial treasurer for such amount, payable out of the moneys in said treasury, not otherwise appropriated.

Sec. 3. This act to take effect and be in force from and after its passage.

Approved February 13th, 1874.

HeinOnline -- 1874 80 1874

JOINT DEBTORS.

AN ACT in relation to joint debtors.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That whenever any co-partnership firm shall be dissolved by mutual consent or otherwise, it shall be and may be lawful for any one or more of the individuals who was or were embraced in such co-partnership firm, to make a separate composition or compromise with any one or all of the creditors of such co-partnership firm; and such composition or compromise shall be a full and effectual discharge to the debtor or debtors making the same, and to them only, of and from all and every liability to the creditor or creditors with whom the same is made or incurred, by reason of his or their connection with such co-partnership firm, according to the terms of such compromise.

Individual member of firm may compromise and release himself as to liabilities of co-partnership.

Sec. 2. Every such debtor or debtors making such composition or compromise, may take from the creditor or creditors with whom he may make the same, a note or memorandum in writing exonerating him or them from all and every individual liability incurred by reason of such connection with such co-partnership firm; which note or memorandum may be given in evidence by such debtor or debtors in bar of such creditor's right of recovery against him or them; and if such liability shall be by judgment in any court of record in this territory, then on a production to and filing with the clerk of such court the said note or memorandum in writing, such clerk shall discharge such judgment of record as far as the said compromising debtor or debtors shall be concerned.

Member of co-partnership so compromising may take memoranda or other evidence of release.

Sec. 3. Such compromise or composition with an individual member of a firm shall not be so con-

HeinOnline -- 1874 81 1874

strued as to discharge the other co-partners, nor shall it impair the right of the creditor to proceed against the members of such co-partnership firm as have not been discharged. And the member or members of such co-partnership firm so proceeded against shall be permitted to set off any demand against said creditor or creditors which could have been set off had such suit been brought against all of the individuals composing such firm; nor shall such compromise or discharge of an individual of a firm prevent the other members of such firm from availing themselves of any defence that would have been available had this act not been passed, except that they shall not set up the discharge of the other co-partners unless it shall appear that all were intended to be discharged: *Provided*, that the discharge of any such co-partner shall be deemed a payment to the creditor equal to the proportionate interest of the partner discharged in the partnership concern.

Such compromise by one member of firm not to operate as release of others.

Member proceeded against may plead set-off same as if co-partner had not settled by compromise.

Act in no way to deny or effect right of defense by member not compromising.

How far discharge of one member deemed payment.

Sec. 4. That such compromise or composition of an individual of a firm with a creditor of such firm, shall in no wise affect the right of the co-partners to call on the individual making such compromise for his ratable portion of such co-partnership debt, the same as if this law had not been passed.

Member compromising to contribute his share of firm debt.

Sec. 5. The above provisions, in reference to co-partners of a firm, shall extend to all joint debtors, except as provided in section six of this act, who are hereby authorized, individually, to compound or compromise, for their joint indebtedness, with the like effect in reference to creditors and to joint debtors of the individual so compromising, as above provided in reference to co-partners.

Act to extend to all joint debtors, except as provided in section six.

Sec. 6. The foregoing provisions shall not be construed to apply to any debtor or debtors who, by the express terms of the contract upon which the indebtedness exist or arose, was the principal debtor while the other joint debtor or debtors were sureties.

Act not to extend to principal debtor when his co-debtor is surety

HeinOnline -- 1874 82 1874

Sec. 7. That upon the rendition of any judgment in any court in this territory, if it shall be shown that one or more of the defendants against whom the judgment is to be rendered are principal debtors, and others of the said defendants are sureties of such principal debtor or debtors, the court may order the judgment, so to state, and upon the issuance of an execution upon such judgment, it shall direct the sheriff to make the amount due thereon out of the goods and chattels, lands and tenements of the principal debtor or debtors, or if sufficient thereof cannot be found within his county to satisfy the same, then that he levy and make the same out of the property, personal or real, of the judgment debtor who was surety.

Judgment may state when debtor's principal and surety.

Goods, &c., of principal debtor to be first taken in such case.

Sec. 8. This act shall take effect and be in force from and after its passage.

Approved February 12th, 1874.

LICENSES.

AN ACT to repeal section 25, of "An Act concerning license," approved May 8th, 1873, in relation to telegraph lines.

Be it enacted by the Legislative Assembly of the Territory of Montana.

Sec. 1. That section 25 of An Act concerning licenses, approved May 8th, A. D. 1873, be and the same is hereby repealed.

Section of license law relating to telegraph lines repealed.

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved February 11th, 1874.

HeinOnline -- 1874 83 1874

LIENS.

AN ACT in relation to mechanics' liens.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section amended.

Sec. 1. That section six of chapter twenty of an act entitled "An Act revising, re-enacting and codifying the general and permanent laws of Montana Territory," approved January 12th, 1872, having reference to mechanics' liens, be amended so as to read as follows:

Party intending to enforce lien to file account of claim, properly verified, with county recorder.

Sec. 6. It shall be the duty of every (person and) all persons except as has been provided for sub-contractors, who wish to avail himself or themselves of the benefits of this act, to file with the recorder of the county in which the building, erection, bridge, flume, canal, ditch, mining claim, quartz lode, ranch, city or town lots, or other improvements upon lands to be charged with lien, is situated, and within ninety days after the things aforesaid have been furnished, or the work or labor done, or performed, a just and true account of the amount due or owing to him after allowing all credits, and containing a correct description of the property to be charged with said lien and verified by affidavit.

Sec. 2. That section seven of said act be amended so as to read as follows:

Duty of recorder when account is filed.

Sec. 7. It shall be the duty of the recorder of the county to endorse upon every account the day of its filing, and make an abstract thereof in a book by him to be kept for that purpose, and properly indexed, containing the date of its filing, the name of the person laying or imposing the lien, the amount of such lien, the name of the person against whose property the lien is filed, and the description of the property to be charged with the same; for all of which he shall receive the sum of one dollar from the person laying or imposing the lien, which

Fee of recorder

HeinOnline -- 1874 84 1874

shall be taxed and collected as other costs in case there be suit thereon. That section twenty of said chapter be amended so as to read as follows:

When suit to be commenced

Sec. 20. All suits under this act shall be commenced within ninety days in case of sub-contractors, and twelve months in all other cases from time of filing the account or statement as aforesaid, and not after, and be prosecuted without unnecessary delay to final judgment.

Approved February 13th, 1874.

LIVE STOCK.

A BILL for An Act concerning the management of live stock and the better to protect the interests of stock-growers in the Territory of Montana.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Division of counties into Stock districts.

Section 1. That the county commissioners of the several counties of this territory shall, at their first regular meeting, after the passage of this act, divide their respective counties into stock districts, of not less than three (districts) and not more than ten districts. They shall have due regard to the natural boundaries and take into consideration the convenience of the resident stock-owners thereof.

Cattle in each districts to be rounded up.

Sec. 2. The said county commissioners shall, also, at their first regular meeting, after the passage of this act, order that the cattle within each district, as the same may be laid off, be gathered together or rounded up, in the most suitable and convenient place in each district, to the stock owners of such district, at such time or times as the said commissioners may designate, under the care and management of the stock owners of such district,

HeinOnline -- 1874 85 1874

subject to such rules and regulations as the county commissioners shall at said meeting prescribe. *Provided*, That round-ups shall not be had oftener than twice in each year. *Provided always*, That the word "cattle" shall not apply to work cattle, dairy or milch cows, or stock of any kind under the supervision of a herder.

Commissioners to appoint persons to take charge of unclaimed stock.

Sec. 3. The said commisssioners shall have authority, and it shall be their duty, at their said first meeting and annually thereafter, to appoint a suitable person or persons in each stock district to take charge of all unclaimed stock that may be found in such district round-up; and said person or persons so appointed shall be allowed a reasonable compensation for the care and custody of such unclaimed stock. Such compensation shall be paid by the owner or owners of such stock, and such reasonable charge or compensation due such person or persons shall be a lien on such unclaimed stock. It shall also be the duty of said commissioners of each county to give a sufficient public notice, for at least thirty days, before the time set for the round-up in each district of their respective counties. *Provided*, That the first round-up in each district herein provided for shall be designated and had on different days, so that the round-up shall not occur on the same day in any two districts of the same county.

Compensation of persons having care of such.

Notice to be given of round-up.

District meeting to elect stock board.

Sec. 4. The said county commissioners shall, at their first meeting, after the passage of this act, order and direct, that on the first Monday in June (1874) a public district meeting shall be held by the *bona fide* residents of each stock district, within their respective counties, for the purpose of organizing a "stock board" in each of such stock districts in each county. At said first meeting the *bona fide* residents then present shall proceed to organize by the selection of one of their number then

Organization of meeting.

HeinOnline -- 1874 86 1874

present as chairman, and one of their number as clerk of such meeting. Such meeting, when thus organized, shall at once proceed to elect by ballot three *bona fide* resident stock owners of such stock district, who shall be denominated "stock inspectors" for such stock district, and shall constitute the stock board of such stock district. The said stock inspectors that may be elected at said first meeting shall hold their office for the period of one year, and until their successors are duly elected. The election in all of the districts of the several counties of this territory, for the stock board of the several districts in each county, shall be held on the first Monday of June, annually, after said first election, at such place as may be selected in each district, by the stock board of such district.

Election of stock inspectors

Sec. 5. The stock board that may be elected in pursuance of section four of this act, shall, as soon as practicable after the adjournment of the meeting by which such board shall be elected, proceed to organize by electing one of their number superintendent and another clerk of said stock board. The superintendent shall preside at all meetings of the board, and the board shall preside at all public meetings of the district. The superintendent shall, with the aid of the other inspectors, superintend all round-ups, and shall have the care and custody of all unclaimed and estray stock.

Organization of board.

Superintendent, his duties, etc.

The clerk of said board shall keep a correct description of all unclaimed and estray stock in a record book kept for such purpose. It shall be the duty of each clerk of his district, within six days after such round-up, to send to the several clerks of the stock districts within his county a brief but correct description of all estray stock of his district.

Clerk of board, his duties, etc.

Sec. 6. Within six days after the organization of each stock board, the clerk of such board shall file in the office of the county clerk of his county a cer-

Certificate of organization filed with county clerk.

HeinOnline -- 1874 87 1874

tificate of the election and organization of such board, which certificate shall be *prima facie* evidence of the due election and organization of such board; but the absence of such certificate shall be conclusive evidence of the district to elect or organize such a stock board. The county clerk shall file and preserve such certificate without fee or compensation.

District brand and vent.

Sec. 7. The stock board of the several districts of each county shall adopt and procure a district stock brand and vent, for the district in which said board shall be elected. The brand and vent shall be recorded in the proper office for recording brands, with cost to the district. The district brand and vent shall remain in the charge and custody of the superintendent of the district, and shall not be used except by the order and direction of a majority of said stock board. All stock found in the district that may be declared estrays, under the laws of the territory shall be branded with the brand of the district, and when such estray stock shall be claimed and lawfully proven by the owner or owners, or when such estray stock shall be sold under the estray law, the district brand on such stock shall in all cases be vented. Any one who may be convicted, by a court of competent jurisdiction, of having used such district brand or vent, without authority of the stock board, or having used a counterfeit brand or vent of the same, shall be fined in a sum of not less than ten dollars, and not more than one hundred dollars, and shall be imprisoned in the county jail of the county in which the offence was committed for a term not exceeding twenty days.

Estrays branded with district brand.

When vent to be used.

Penalty for illegally using brand or vent.

When unclaimed stock branded and declared estrays.

Sec. 8. All stock that shall be unclaimed at any round-up and shall remain unclaimed for the period of ninety days thereafter, shall be branded with the brand of the district, and shall remain in the custody of the superintendent of the stock board. If such stock shall remain unclaimed, and

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the owner does not appear and claim his property, and prove the same, and pay all reasonable charges for the care and custody of the same, before the next round-up after such stock was recorded as unclaimed, the same shall be declared estray, and shall be advertised by posting written or printed notices in three of the most public places in such district, and shall he sold to the highest bidder, for cash, by the superintendent, at public sale. The proceeds of such sale shall, first, be applied to the payment of the proper and necessary costs for the care, custody, and sale of such estray, and the residue shall be placed in the district fund, subject to the order and direction of the stock board of such district.

Estrays sold by superintendent

Sec. 9. If any person shall brand or mark, with his own brand, any animal being the property of another, or shall efface, deface, or obliterate any brand upon any animal, with intent to convert such animal to his own use, or to prevent the owner thereof from recovering the same, every such person so offending shall be deemed guilty of larceny.

Penalty for illegally branding or effacing brand.

Sec. 10. Any person who shall sell or dispose of any animal branded with his brand shall be required to vent the said brand, and a failure to do so shall lay the vendor liable to a fine equal to the worth of the animal sold or disposed of, the same to be collected as other fines in this act provided, and to be paid into the treasury for the benefit of the school fund.

Person selling stock branded to vent brand.

Sec. 11. All animals affected with any contagious disease shall be at once removed by the owner thereof, or the person in charge of the same, to some secure inclosure, or shall be strictly herded six miles away from any farm, or from any stock running at large, or being herded. Every person who shall neglect or refuse to remove diseased stock affected with any contagious disease, or refuse

Animals with contagious disease to be removed.

HeinOnline -- 1874 89 1874

or neglect to place such stock in a secure enclosure, or herd them away from any farm or other stock as above provided, shall be liable to be arrested, and on conviction before a court of competent jurisdiction, shall be fined in any sum not less than fifty dollars and not more than five hundred dollars, and shall also be liable to the party injured by such diseased animals running at large after due notice of their diseased condition. It shall be the duty of some one or more of the stock inspectors of the district upon application of any resident of the district, to at once inspect and examine into the condition of any stock alleged to be affected with any contagious disease, and if such stock shall be found so diseased, such inspector shall order such diseased stock to be at once secured or herded in accordance with this section, or if necessary have the same killed by unanimous consent of the board.

Penalty for not removing.

Stock inspector to examine diseased stock, his duty, etc.

Sec. 12. This act shall take effect and be in force from and after its passage.

Approved February 13th, 1874.

MARKS AND BRANDS.

AN ACT in relation to Trade Marks and Brands.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That any person, partnership, firm, or private corporation, desiring to secure within this territory the exclusive use of any name, mark, brand, print, designation, or description, for any article of manufacture or trade, or for any mill, hotel, factory, machine shop, or other business, shall deliver to the Recorder of Brands for the Territory of Montana, or

Manner in which exclusive right to use mark or brand can be secured.

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cause to be delivered to him, a particular description or *fac-simile* of such brand, mark, name, print, designation, or description as he may desire to use.

Recorder of brands to record.

Sec. 2. If there be not already a claim filed with the recorder of brands for the same or a similar name, mark, brand, print, designation, or description, he shall immediately record the one furnished, in a book, to be specially provided and kept by him for that purpose, which book shall be at all times subject to public inspection and examination. And after the said record, the person or persons causing the same to have been recorded shall have the exclusive right to use the said name, mark, print, brand, designation, or description. That the exclusive right herein granted shall only authorize the record of a mark, brand, or particular device, and shall not authorize the exclusive use of figures, letters, or roman numerals. If there be already filed the same or a similar brand, mark, name, print, designation, or description, the recorder of brands shall so inform the applicant without delay, and shall not record the same.

After recorded person having same recorded to have exclusive right to use.

Extent of right.

Recorder to inform applicant when brand already recorded.

Penalty for using brand, mark, &c., by other party after recorded.

Sec. 3. Any person, partnership, firm, or corporation that shall use or cause to be used any brand, mark, name, print, designation, or description, the same as, or similar to, the one so secured or recorded, for the purpose of deception or profit, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars, and not more than one thousand dollars.

Penalty for using article already marked for purpose of deception.

Sec. 4. Any person, partnership, firm, or private corporation that shall use, or cause to be used, any second-hand sack, box, barrel, can, package, or other article on which has been placed any name, brand, mark, print, designation, or description, the property of another, for the purpose of deception, shall be deemed guilty of a misdemeanor, and upon

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conviction thereof shall be fined in any sum not less than one hundred dollars, nor more than one thousand dollars.

Fee of recorder for recording.

Sec. 5. The fee of the recorder of brands shall be one dollar for recording each brand, mark, name, print, designation, or description.

Act not to affect power of courts of equity.

Sec. 6. Nothing in this act shall be construed as to affect the power of courts of equity to perpetually restrain, by injunction or otherwise, the improper use of any mark, brand, name, print, designation, or description, nor to prevent the sale or transfer of such mark, brand, name, print, designation, or description, with the right to use the same.

Persons now using brand or mark to have until July 1st to file.

Sec. 7. Persons now using brands or marks for any of the purposes aforesaid shall have until July 1st, 1874, in which to file their claim thereto, before which date no claim to a new brand or mark shall be filed.

Fines under act how appropriated.

Sec. 8. That all fines arising under the provisions of this act shall be paid into the county treasury of the county where the offence was committed, for the benefit of the school fund.

Repealing clause.

Sec. 9. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after July 1st, 1874.

Approved February 2, 1874.

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MARRIED WOMEN — SOLE TRADERS.

AN ACT to authorize married women to transact business in their own name, as sole traders.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Married women as sole traders.

Section 1. Married women shall have the right to carry on and transact business under their own name, and on their own account, by complying with the regulations prescribed in this act.

Notice by married woman of intention as sole trader.

Sec. 2. Any married woman residing within this territory, desirous to avail herself of the benefit of this act, shall make her declaration before any person authorized to take acknowledgment of conveyances that she intends to carry on business in her own name and on her own account, specifically setting forth the nature of the business she intends to carry on and transact, and from that date shall be individually responsible in her own name for all the debts contracted by her by virtue of said business, the declaration to be recorded in the office of the county recorder of the county in which said business is to be transacted and carried on.

Rights and liabilities of as sole trader.

Sec. 3. After such declaration has been duly recorded as heretofore provided, the person so making her declaration as aforesaid shall be entitled to carry on her business in her own name, and the property, revenue, money, and debts and credits shall belong exclusively to said married woman, and shall not be liable for any of the debts of her husband, and she shall be allowed all the privileges and be liable for all the legal processes now or hereafter provided by law against debtors and creditors.

Children of maintained by.

Sec. 4. Any married woman availing herself of the benefit of this act shall be responsible for the maintenance of her children.

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Sec. 5. No married woman shall commence or carry on business on her own account under the provisions of this act, when the amount originally invested in said business exceeds the sum of ten thousand dollars, unless the declaration provided for in section 2 contain a statement, under oath, that the surplus of money above ten thousand dollars invested in said business did not come from any funds belonging to her husband.

Limitation as to.

Sec. 6. The husband of the wife availing herself of the benefit of this act shall not be responsible for any debts contracted by her in the course of said business, without the special consent of said husband, given in writing, nor shall the separate property of said husband be taken on execution for any debts contracted by her.

Husband not liable for debts of.

Sec. 7. All acts and parts of acts in conflict with this are hereby repealed.

Sec. 8. This act to take effect and be in force from and after its passage.

Approved February 4, 1874.

MINES—RIGHT OF WAY.

AN ACT to amend section 13, of chapter 83, of an act entitled "An Act concerning the rights of way and easements, and other necessary means for the development of mines," approved January 4, 1872.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That section 13, of chapter 83, of an act entitled "An Act concerning the rights of way and easements, and other necessary means for the development of mines," approved January 4, 1872, be amended so as to read as follows:

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Sec. 13. The costs and expenses of proceedings under the provisions of this act, except as herein otherwise provided, shall be paid by the party making the application: *Provided*, however, that if the applicant shall, before the commencement of such proceedings, have tendered to the parties owning or occupying the lands or mining claims a sum equal to or more than the amount of damages recovered by the defendant or defendants, then all of the costs and expenses shall be paid by the party or parties owning the lands or mining claims affected by such right of way, and who appealed and resisted the claim of the applicants thereto.

Costs paid by applicant.

Provided applicant shall tender amount of damages.

Sec. 2. That all acts and parts of acts in conflict with this act be and the same are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its passage.

Repealing clause

Approved February 13, 1874.

PENITENTIARY.

AN ACT to amend an act entitled "An Act to regulate and govern the Montana Penitentiary," approved May 8, 1873.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That section 14, of an act entitled "An Act to regulate and govern the Montana Penitentiary," approved May 8, 1873, be amended so that the same shall read as follows:

Section amended.

Sec. 14. It shall be the duty of the board of directors to keep all the convicts, able to perform manual labor, constantly employed on continuous contracts for their labor, if such contracts can be made, and if not, then on such labor as can be procured for them at some reasonable rate, as the best

Directors to keep convicts employed.

HeinOnline -- 1874 95 1874

interests of the territory shall require, at the highest price in either event that can be obtained, with due regard to their security; and the proceeds of their said labor shall be applied to the payment of the current expenses of the prison. And the said board is hereby authorized, and (it) is made their duty, to let the labor of the prisoner, if the same can be by them done, at any reasonable rate, for a period not exceeding four years, and they shall obtain the best terms and highest rate possible; and the person or persons, company or association, so contracting for said labor are hereby authorized, under the direction and authority of said board, to construct shops and machinery within or near the enclosure, in which to employ said labor, and if said labor is so contracted, the contractor shall give bonds in the sum of ten thousand dollars, with two sufficient freeholders as sureties, conditioned for the payment of such labor, and strict diligence in the keeping and care of the prisoners while employed, which said bond shall be approved in the first instance by the directors, and by the governor, who shall deposit the same with the territorial auditor.

Products of labor applied to pay current expenses.

Directors to let out labor of convicts.

Party contracting for labor to give bond.

Payment made to warden.

Sec. 2. The payment shall be paid quarterly to the warden, who shall report the same forthwith to the board of directors, and to the auditor of the territory, and he shall pay the same without delay to the territorial treasurer.

The warden to report and pay over same, &c.

Section repealed.

Sec. 3. The original section, 14, of the act aforesaid, is hereby repealed.

(Sec. 4.) This act shall take effect and be in force from and after its passage.

Approved February 13, 1874.

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PLACER MINES.

AN ACT to repeal an act entitled "An Act to provide for the forfeiture to the territory of placer mines held by aliens," approved January 12, 1872.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That an act entitled "An Act to provide for the forfeiture to the territory of placer mines held by aliens," approved January 12, A. D. 1872, be and the same is hereby repealed. Act of January 12th, 1872, repealed.

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved January 15, 1874.

PROBATE COURTS.

AN ACT to provide for the holding of terms of the Probate Court.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That there shall be regular terms of the probate court held in the several counties of the territory, on the first Mondays of January, March, July, September, and November of each year, for the transaction of probate business. Regular terms of probate court in the several counties.

Sec. 2. That this act shall take effect and be in force from and after its passage.

Approved February 13, 1874.

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PROBATE CLERK.

AN ACT to amend an act entitled An Act revising, re-enacting, and codifying the general and permanent laws of Montana Territory, approved January 12, 1872.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section amended.

Section 1. That section 2, of chapter 11, of an act entitled An Act revising, re-enacting, and codifying the general and permanent laws of Montana Territory, approved January 12, 1872, be amended so as to read as follows:

Clerk of probate court appointed by probate judge.

Sec. 2. The said probate clerks shall be appointed by their respective judges, to hold their office at the will and pleasure of the probate judge so appointing him: *Provided*, however, that the appointment of a clerk shall be optional with the judge in such counties; when the judge does not deem it necessary, he may and is hereby authorized to act as *ex-officio* clerk, subject to give such additional bond as is required by law.

Repealing clause.

Sec. 2. That section 3 of said act, and all acts and parts of acts in conflict with this act, are hereby repealed.

Sec. 3. This act to take effect and be in force from and after its passage.

Approved February 13, 1874.

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PUBLICATION — LEGAL NOTICES.

An ACT to regulate the rights of parties in the publication of legal notices.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That in all cases wherein the publication of legal notices can be made in one of two or more newspapers, in accordance with the laws now in force in reference thereto, the party, his agent, or attorney procuring such notice, may direct and designate the newspaper in which the same may be made: *Provided*, the same be made in some paper published in the county where suit is commenced, and if no paper be published in the county, then in the nearest paper published in the judicial district, unless the judge of the court in which such action is pending shall determine that such papers are not the papers most likely to give notice to the person to be sued. And it shall be the duty of the officer charged with the publication thereof to so publish the same in accordance with such direction.

Party or attorney may select newspaper to publish legal notice.

Sec. 2. All acts and parts of acts in conflict herewith are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved January 17, 1874.

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REVENUE.

AN ACT to amend section forty-four of chapter eighty-five of an act entitled "An Act revising, re-enacting and codifying the general and permanent laws of Montana Territory," providing for the collection of the revenue, approved January 12th, 1872.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That section forty-four of chapter eighty-five, of an act entitled "An Act revising, re-enacting [and] codifying the general and permanent laws of Montana territory, providing for the collection of revenue," approved January 12th, 1872, be amended so as to read as follows:

Sec. 44. Each county treasurer shall, at the expiration of every three months, render an account of and cause to be paid over to the territorial treasurer, the amount of all moneys collected for territorial purposes, and shall complete the collection of all lists delivered to him, and at the expiration of each fiscal year, and at the expiration of his term of office shall make final settlement with the county commissioners of his county, who shall report to the territorial treasurer immediately thereafter a correct statement of the amount found due the territory, and the county treasurer shall remit to him such amount. No mileage shall in any case be hereafter allowed to county treasurers.

County treasurer to render an account and pay moneys to territorial treasurer every three months.

To make final settlements end of every fiscal year and expiration of office.

No mileage allowed county treasurers.

Sec. 2. All acts and parts of acts in conflict with this act are hereby repealed.

Acts repealed.

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved February 9, 1873.

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REVENUE.

AN ACT to amend an act entitled "An act providing for the collection of revenue," approved January 12, 1872.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That section twenty-eight of an act entitled "An Act providing for the collection of revenue," be amended so as to read as follows: Section amended.

Sec. 28. The treasurer shall, within twenty days from the time he shall receive the assessment roll from the clerk, direct to each tax payer of his county a written or printed notice of the amount of tax due from such tax payer, and the time the same becomes due. Such notice shall be directed to the nearest post office to which said tax payer resides. Printed blanks for said notices and postage stamps for the same, shall be furnished said treasurer by the board of county commissioners. No other demand for taxes shall be necessary, but it shall be the duty of every person owing taxes to pay the same to the treasurer of the county, at his office, and if any such tax payer shall fail or refuse to pay the taxes assessed against him, on or before the first day of December following, the levy thereof of ten (10) per cent. of such taxes shall be added thereto, and collected as a portion of said taxes, and it shall be the duty of the tax collector immediately after the said first day of December, to seize any personal property belonging to or which may have been assessed to any tax payer who shall then be delinquent, and sell the same as provided in section forty-seven; *Provided*, That nothing herein shall be so construed as to prohibit the collector from seizing and selling personal property at any time before the first day of December. But it shall be his duty at any time when there

Treasurer to notify tax payer of taxes due.

Blanks and postage furnished by county commissioners.

Taxes to be paid at office of treasurer.

Penalty for not paying on or before December first of each year.

Proceeding against delinquent.

HeinOnline -- 1874 101 1874

shall appear to be danger of the removal of property on which taxes are unpaid, from the county, to seize and sell a sufficient amount of the same to satisfy the taxes thereon, together with the costs of seizure and sale.

Duty of treasurer if danger of property being removed.

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved Febuary 10th, 1874.

REVENUE.

AN ACT to amend an act entitled "An Act providing for the collection of revenue," and to repeal section one, of said act.

Be it enacted by the Legislative Assembly of the Territory of Montana:

That section one, of an act entitled "An Act providing for the collection of revenue," passed January 12th, 1872, be so amended as to read as follows:

Section 1. There shall be levied annually by the board of county commissioners of each county in this territory, and collected by the county treasurer of such counties, an *ad valorem* tax, on each dollar of assessed valuation on all property in this territory, subject to taxation, for territorial purposes, on each dollar, three mills; for county purposes on each dollar, any sum not exceeding sixteen mills; and for school purposes, not less than three, nor more than five mills; and for the benefit of the poor, not less than one, nor more than five mills; and such levy, when made, shall be entered on the books of said commissioners, and in any county where the levy for the current year has been made, the county commissioners of each county shall, at their meeting, proceed to levy such taxes as they are herein

Amount of taxes to be levied and collected annually.

Amount levied to be entered on books of county commissioners.

When levy to be made.

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authorized to levy, unless they at their Janury meeting have levied the same.

Sec. 2. That section one of said act be and the same is hereby repealed. Repealing clause.

Sec. 3. This act to take effect on and after its passage.

Approved February 9th, 1874.

ROADS AND HIGHWAYS.

AN ACT in relation to roads and highways.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That all county roads shall be under the supervision of the board of county commissioners of the county wherein the said road is located, and no county road shall be hereafter established, nor shall any such road be altered or vacated in any county in this territory, except by authority of the county commissioners of the proper county. County roads under supervision of county commissioners.

Sec. 2. All applications for laying out, altering, or locating county roads, shall be by petition to the county commissioners of the proper county, signed by at least twelve householders of the county, residing in the vicinity where said road is to be laid out, altered, or located, which petition shall specify the place of beginning, the intermediate points, if any, and the place of the limitation of said road. Applications for county roads.

Sec. 3. When any petition shall be presented for the action of the county commissioners for the laying out, alteration, or vacating of any county road, it shall be accompanied by satisfactory proof that notice has been given by advertisement, posted on the front door of the county clerk's office, and also in three public places in the vicinity of said Notice for application.

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road or proposed road, thirty days previous to the presentation of said petition to the county commissioners, notifying all persons concerned that application will be made to the said county commissioners, at their regular session, for laying out, altering, or vacating such road, as the case may be.

Appointment of viewers and surveyors.

Sec. 4. Upon the presentation of such petition, and proof that notice has been given, as provided in the last section, the county commissioners shall, if they deem the proposed road or alteration of public utility, appoint three disinterested householders of the county as viewers of said road, and a skillful surveyor to survey the same, if deemed necessary by the county commissioners, and shall issue an order directing said viewers and surveyor, if appointed, on a day to be named in said order, or on their failing to meet on said day, within five days thereafter, to view, survey, if so ordered, and lay out or alter said road.

Duties of viewers and surveyors.

Sec. 5. That it shall be the duty of the viewers and surveyors, appointed as aforesaid, after receiving at least five days previous notice by one of the petitioners, to meet at the time and place specified in the order of the county commissioners aforesaid, or within five days thereafter, and after taking an oath or affirmation, faithfully and impartially to discharge the duties of their appointments, shall proceed to view, survey if necessary, and lay out or alter said road, as prayed for in the petition, as near as in their opinion a good road can be made at a reasonable expense, taking into consideration the utility, convenience, inconvenience, and expense which will result to individuals as well as to the public, if such road shall be established and opened or altered. The surveyor, if appointed, shall survey, under the direction of the viewers, and shall make out and deliver to one of the viewers a certified return of the survey of said road, and a plat of

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the same; and the viewers, or a majority of them, shall make and sign a report in writing, stating their opinion in favor of or against the establishment or alteration of such road, and set forth the reasons of the same, which report, together with the plat and survey of said road or alteration, if made, shall be delivered to the county clerk by one of the viewers, on or before the first day of the session of the board of county commissioners next ensuing; and it shall be the duty of the county commissioners, on receiving the report of the viewers aforesaid, to cause the same to be publicly read on two different days of the same meeting, and if no remonstrance or petition for damages be filed, and the county commissioners being satisfied that such road will be of public utility, will order the report of the viewers, survey, and plat to be recorded, and from thenceforth said road shall be considered a public highway, and the commissioners shall issue an order directing said road to be opened.

Report of viewers.

Opening of road.

Sec. 6. That in all cases where any oath or affirmation is required to be taken by any person under the provisions of this act, the same may be administered by one of the viewers, who has been previously sworn: *Provided*, that it shall not be necessary to survey any county road, new road, or alteration in roads, if the county commissioners so direct.

Oath of viewers when road not surveyed.

Sec. 7. If any person through whose lands any county road may be viewed or marked out, shall feel that he or she would be injured by the opening of the same, such person may make complaint thereof in writing to the county commissioners at the time the report of the viewers appointed to view said road is received; and if such complaint be made, the county commissioners shall appoint three disinterested householders of the county, who shall meet at such time as may be designated by the commis-

When damages claimed.

HeinOnline -- 1874 105 1874

sioners, or at such time as may be agreed upon by such householders, and after having been duly sworn or affirmed to discharge their duty faithfully and impartially, shall proceed and view said proposed road the whole distance through the premises of the complainant, and assess and determine how much less valuable such premises of the complainant would be rendered by the opening of said road, and they shall report the same in writing to the county commissioners at the next regular session.

Commissioners appointed to assess and report.

Sec. 8. If the county commissioners are satisfied that the amount of damages so assessed is just and equitable, and that the proposed road will be of sufficient importance to the public to cause the damages so assessed and determined to be paid by the county, the commissioners shall order the same to be paid to the complainant out of the county road fund; but if in the opinion of the county commissioners such proposed road is not of sufficient importance to the public to cause damages to be paid by the county, they shall refuse to establish the same as a public highway, unless the expense or damages, or such part thereof as they may think proper, shall be paid by the petitioners.

Damages, how paid.

Sec. 9. Any complainant who may conceive himself aggrieved by the assessment of damages as prescribed in the last two sections, may, within thirty days after such report is adopted by the county commissioners, appeal therefrom to the district court of the proper county; such appeal shall be taken to the district court in the same manner as appeals from justices of the peace, and if the appellant shall fail to recover a judgment for fifty dollas more than the amount appealed from, he shall pay all costs of appeal.

Appeal from assessment of damages.

Sec. 10. All county roads shall be sixty feet in width, unless the commissioners shall, upon the

Width of roads.

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prayer of the petitioners for the same, determine on a less number of feet in point of width.

Changing location of roads.

Sec. 11. If any person or persons, through whose lands any public highway is or may be established, shall be desirous of changing such road through any other part of his or their lands, such person or persons may, by petition, apply to the county commissioners of the proper county to permit him or them to turn such road through any other part of his or their lands on as good ground, and without materially increasing the distance, without injury to the public; and on receipt of such petition, accompanied by a sufficient bond to pay the costs and expenses to be incurred thereby, the commissioners may appoint three disinterested householders as viewers, and a surveyor if necessary, who, or a majority of such reviewers, shall proceed to review the ground over which the road is proposed to be changed, and ascertain the distance such road will be increased by the proposed alteration, and make out a report in writing, stating their opinions as to the utility of making such alterations, and if the viewers, or a majority of them, shall report to the county commissioners that the prayer of the petitioner or petitioners is reasonable, and, upon receiving satisfactory evidence that the proposed new road has been opened a legal width, and in all respects made equal to the old road, for the covenience of travelers, the commissioners shall declare such new road a public highway, and make record thereof, and at the same time vacate so much of the old road as is not embraced in the new, and the person or persons petitioning for the alteration shall pay all costs and expense of view, survey if ordered, and return of such alteration.

Viewers fined for neglect of duty.

Sec. 12. If any viewer or viewers shall refuse or neglect to perform the duties required by this act, without making satisfactory excuse for such refusal

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or neglect, he shall be fined in any sum not exceeding ten dollars, to be recovered by an action before a justice of the peace of the proper county, which fine when collected shall be paid over without delay into the county treasury for the benefit of the road fund.

Private ways or roads.

Sec. 13. Any person whose land shall be so situated that it has no connection with any public road, may make application in writing to the county commissioners of his county at a regular session, for a private road leading from his premises to some convenient public road, and thereupon the said commissioner shall appoint three disinterested householders of the county as viewers, and cause an order to be issued directing them to meet on a day named in such order, to view and locate a private road according to the application, and to assess the damages to be sustained thereby, and after being duly sworn or affirmed, faithfully and impartially to discharge the duties of their appointment, and after at least three days notice given to all persons through whose lands such private road is to be located, such viewers shall proceed to locate and mark out a private road twenty feet in width, from some certain point on the premises of the applicant, to some certain point on the public road, so as to do the least possible damage to the lands through which such private road is located, and they shall also, at the same time, assess the damages sustained by the person or persons owning such lands.

Gates on private roads.

Sec. 14. The viewers appointed in accordance with the provisions of the preceding sections of this act shall have power to determine in all cases whether or no gates shall be placed at proper points on said road, and assess damages in accordance with such determination.

Sec. 15. The viewers so appointed, or a majority of them, shall make a report to the county com-

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missioners, at the next regular session, of the private road so located by them, and also the amount of damages, if any, assessed by them, and the person or persons entitled to such damages; and if the commissioners are satisfied that such report is just, and after payment by the applicant of all costs of locating such road and the damages assessed by the viewers, the commissioners shall order such report to be confirmed, and declare such road to be a private road, and the same shall be recorded as such; and any person aggrieved by the assessment of damages may appeal within thirty days after such confirmation of the report, to the district court.

Viewers to report on private roads.

Establishment of private roads

Sec. 16. The several county commissioners shall, as often as they deem necessary, but not oftener than once a year, divide their respective counties, or any part thereof, into suitable and convenient road districts, and cause a brief description of the same to be entered on the county records.

County divided into road districts.

Sec. 17. The several boards of county commissioners shall at their next regular meeting in March appoint a supervisor for each road district in the county, and thereafter at every general election there shall be elected by the qualified voters of each district a supervisor thereof, who shall hold his office for the term of one year, beginning March first next ensuing after his election. The county clerk is hereby required to immediately notify each supervisor of his appointment or election, as the case may be, and the said supervisor shall qualify within twenty days after his appointment or election. The county commissioners are hereby authorized to fill all vacancies that may occur in said office.

Supervisor for each road district.

County clerk to notify supervisor, and he to qualify.

Vacancies.

Sec. 18. Each supervisor shall hold his office for one year unless sooner removed, and shall take an oath to faithfully discharge the duties of his office,

Term of office, oath and bond of supervisor.

HeinOnline -- 1874 109 1874

and shall enter into an undertaking to the county with one or more sureties, to be approved by the county commissioners, in any sum specified by them, not to exceed one thousand dollars, to the effect that he will faithfully account for all moneys collected by him and perform the duties of his office according to law. The commissioners shall have power at any time to remove from office any supervisor who shall fail, neglect or refuse to perform the duties of his office.

Supervisor may be removed.

Sec. 19. There shall be levied and collected on all taxable property in the county the sum of not less than one mill nor more than two mills on the dollar; also a special road tax of three dollars on each able-bodied man between the ages of twenty-one and forty-five years residing in each district. *Provided*, That any person liable to pay road tax, either special or *ad valorem*, may work out such tax under the directions of the supervisor of the district where such person resides, and shall be allowed for such work the sum of three dollars per day, *and provided, further:* That if the special road tax in any road district is sufficient to keep the public roads in good order, the supervisor may refuse to receive labor for the *ad valorem* road tax, and the same shall be paid into the county treasury for the benefit of the general road fund. The several county treasurers are hereby authorized and empowered to collect all road tax, both special and *ad valorem*, levied in each year as required by law for the collection of revenue. *Provided*, That any person producing the supervisor's certificate for labor done and performed, or for material furnished on any road or bridge, by order of said supervisor, shall be allowed the same on his road tax; *Provided, also*, That no special road tax shall be required from any member of any organized fire company of any village or city.

Road tax and labor.

Collection of road tax.

HeinOnline -- 1874 110 1874

Notice to work, and penalty for not working.

Sec. 20. The supervisor must notify every person within his road district, subject to road labor as aforesaid, to perform one day's work in each year upon the public roads, and if any person subject to road labor as aforesaid shall, after three days' notice, either personally, or by writing left at his usual place of abode, by the supervisor or any other person under his direction, neglect or refuse to attend by himself or suitable substitute, at the time and place designated by the supervisor, or having attended, shall refuse to obey the directions of the supervisor, or shall pass his time in idleness or inattention to the labor or duties assigned him, every such delinquent shall thereby become liable for the amount of his road tax in money, and if such person has no real estate assessed in his name, it shall be the duty of the supervisor to make complaint before the probate judge or some justice of the peace, setting forth the facts of such notice and refusal to perform the required labor or to pay the money, when, if such charge be sustained after a hearing, the delinquent shall be deemed guilty of a misdemeanor and shall be fined in the amount due from him for road tax together with all costs. Such fine to be collected as in ordinary criminal actions and to be paid to the supervisor for the use of the road fund in his district.

Collection of delinquent tax.

Hours of labor, tools, &c.

Sec. 21. Every person notified to labor on the public roads, under the provisions of this act, shall be required to appear at the place appointed by the supervisor, at the hour of eight o'clock in the forenoon, with such necessary tools and implements as said supervisor may direct, and work industriously and diligently, doing at least eight hours faithful labor in each day at such work, and in such manner as shall be directed by the supervisor; and such supervisor may, if he deem it necessary, order any resident of his district, from whom road work or

HeinOnline -- 1874 111 1874

tax is due and owing, to furnish a team of horses, mules, or oxen, and wagon, cart, scraper, or plow, to be employed or used on the roads under the direction of such supervisor, and shall allow such person a reasonable compensation for the use of such team, wagon, cart, scraper, or plow, in discharge of any labor due from such person.

Power of supervisor to order teams, &c.

Sec. 22. The supervisor of roads shall open, or cause to be opened, all public roads which may have been, or may hereafter be laid out and established according to law, in any part of his road district, and shall keep the same in good repair, and if the labor in his district is not sufficient for that purpose, the supervisors shall have power and authority to call out all persons liable to road tax for one more day's labor, and if such labor is not sufficient the board of commissioner are hereby authorized, at their discretion, to appropriate from the general road fund any amount they may see fit for the use and benefit of such district.

Supervisor to open and repair roads.

Extra labor and money for repairs.

Sec. 23. The road supervisor shall have authority to cut, open or construct such drains and ditches as he shall deem necessary for the making and preserving of such roads, doing as little injury as may be to the lands; and any person stopping or obstructing the drains or ditches so made shall forfeit the sum of twenty dollars, to be recovered by the supervisor in a civil action as before provided. If any person shall feel aggrieved by the act of any supervisor cutting or carrying away any timber or stone as aforesaid, he may make complaint in writing to the county commissioners who shall allow any damages they may see fit, and pay the same out of the road fund. The county commissioners may authorize the supervisors to purchase any plows, scrapers or other instruments that they may think proper, for the use of the road district, and pay for same out of general road fund.

Drains and ditches, penalty for obstructing.

Damages for acts of supervisor.

Purchase of implements.

HeinOnline -- 1874 112 1874

Removing obstructions and repairing bridges.

Sec. 24. If, at any time during the year, any public road shall become obstructed by snow, or from any other cause, or any bridge shall need repairing, or become dangerous for the passage of teams or travelers, the supervisor of the road district, upon being notified thereof, shall forthwith cause such obstruction to be removed, or bridge repaired, for which purpose he shall immediately order out such number of inhabitants of his district as he may deem necessary to remove such obstruction or to repair such bridge; and all persons so ordered out shall, after having received one day's notice, be subject to the same restrictions and liable to the same penalties as if ordered out under section twenty-one of this act.

Credit for extra labor.

Sec. 25. In all cases under the preceding section, where any person has performed labor on the public roads in removing obstructions or repairing bridges, the supervisors shall give such person a certificate, specifying the amount of extra labor so performed, which certificate may be transferred and received in discharge of the labor of any other person within the same district to the amount of labor specified in such certificate, or may be received from the holder in satisfaction of labor on the roads in such district at any subsequent year for the amount of labor specified therein.

Pay and reports of supervisor.

Sec. 26. Every supervisor of roads shall receive for each day necessarily employed in the performance of any of the duties required by this act, the sum of three dollars, to be paid out of the general road fund; and it shall be the duty of the supervisor to report to the board of county commissioners, at their regular meetings in December, in each year, a sworn statement of all moneys collected by them; they shall also present a sworn statement of the number of days of work done in their district for each year and by whom performed.

HeinOnline -- 1874 113 1874

Of actions against delinquents. Presumption.

Sec. 27. In an action by the supervisor to recover a delinquent special road tax as herein provided, the presumption shall be that the defendant was duly warned to work the road, and failed and neglected so to do, and that he had no real property listed to him during the current year. No property is exempt from execution and sale for a delinquent road tax.

No property exempt.

Supervisor fined for neglect of duty or signing false certificate.

Sec. 28. Any supervisor of roads who shall neglect or refuse to perform the several duties enjoined upon him by this act, or who shall, under any pretense whatever, give or sign any receipt or certificate purporting to be a receipt or certificate for money paid or labor performed, unless the money shall have been paid or the labor performed prior to the giving or signing such receipt or certificate, shall forfeit for each offense not less than five nor more than twenty dollars, to be recovered before any court having jurisdiction; and it shall be the duty of the county commissioners to sue for the same in the name of the county.

Pay of surveyor

Sec. 29. Every person employed as surveyor under this act shall receive as compensation the sum of seven dollars per day, and each viewer the sum of three dollars per day for each day necessarily employed in such labor in surveying or laying out roads under the supervision of the county commissioners.

Distance of county roads apart.

Sec. 30. County roads running parallel shall not be nearer than one mile, and upon the presentation of a petition signed by at least five freeholders of any neighborhood praying for passage to the various water courses for stock purposes, the commissioners may, at their discretion, establish such passageway as provided for in section thirteen of this act. This section shall also apply to the opening and establishment of neighborhood roads running to timber.

Stock and timber roads.

HeinOnline -- 1874 114 1874

Sec. 31. Every supervisor shall erect or cause to be erected and keep up at the forks of every highway and every crossing of public roads within his district, a guide or finger board, containing an inscription in legible letters, directing the way and specifying the distance to the next town or public place situated on each road respectively. Guide boards.

Sec. 32. That chapter LIII. of the codified statutes in relation to "Roads and Highways," and "Roads, Districts, and Supervisors," and all other acts or parts of acts in conflict with this act, be and the same are hereby repealed. Conflicting acts repealed.

Sec. 33. That this act shall take effect and be in force from and after its passage.

Approved February 12, 1874.

SCHOOLS.

AN ACT to provide for a system of Common Schools.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. A superintendent of public instruction shall be appointed by the governor, by and with the advice and consent of the legislative council, and shall enter upon the duties of his office on or before the twentieth day after his appointment, and shall hold office for the term of two years, or until his successor is appointed and qualified; and shall execute a bond in the penal sum of two thousand dollars, with two good and sufficient securities to be approved by the secretary of the territory, conditioned upon the faithful discharge of his official duties. The superintendent of public instruction shall have power to adopt a course of studies Superintendent of public instruction; appointment and term of office. Powers of.

HeinOnline -- 1874 115 1874

and rules and regulations for all public schools in the territory; and shall have and use a seal, and authorize the printing of all regulations and circulars necessary to carry their provisions into effect;

Report of.

and shall report to the governor biennially, on or before the first day of December of the years in which the regular sessions of the legislature are held. The governor shall transmit said report to the legislature, and, whenever it is ordered printed, a sufficient number of copies shall be delivered to the superintendent of public instruction, to furnish two copies to be deposited in the territorial library, and one copy to each superintendent of common schools, to be held by him as public property, and delivered to his successor in office; and one copy to each local school officer within the territory. Said report shall contain a statement of the condition of the public schools in the territory, full statistical tables by counties, showing, among other statistics, the number of school children in the territory, the number attending public schools, the average attendance, the number attending private schools, and the amount raised by county and district taxes or from other sources of revenue for school purposes, the amount expended for salaries of teachers and for building and furnishing schoolhouses, and the statement of the plans for the management and improvement of schools.

To furnish school officers with forms and register.

Sec. 2. The superintendent of public instruction shall prepare and cause to be printed suitable forms for making all reports and conducting all necessary proceedings under this act, and shall transmit them to the local school officers and teachers, who shall be governed in accordance therewith; he shall furnish each superintendent of common schools with suitable diplomas and certificates, and shall prepare a school register, which shall be fur-

HeinOnline -- 1874 116 1874

nished to each school and school district in the territory.

Sec. 3. It shall be the duty of the superintendent of public instruction to travel in the different counties of the territory where common schools are taught, so far as possible, without neglecting his other official duties, during at least three months in each year, for the purpose of visiting schools, of consulting with county superintendents, and of addressing public assemblies on subjects pertaining to public schools; and his necessary traveling expenses, not exceeding three hundred dollars in any one year, shall be paid out of any funds in the treasury not otherwise appropriated.

To visit schools in territory.

Treveling expenses paid.

Sec. 4. The superintendent of public instruction shall keep his office at some place where there is a post office, and he shall receive a salary of twelve hundred dollars per annum, which shall be paid quarterly out of the territorial treasury.

Place of office and salary.

Sec. 5. All necessary expenditures of money incurred by the superintendent of public instruction, for rent, fuel, postage, printing, expressage not exceeding two hundred dollars in any one year, shall be paid out of any fund in the treasury not otherwise appropriated, and the territorial auditor is hereby authorized to issue his warrant on the treasurer for the same.

Expenses of office.

Sec. 6. The superintendent shall, at the expiration of his term of office, deliver over, on demand, to his successor, all property, books, documents, maps, records, reports and other papers belonging to his office, or which may have been received by him for the use of his office.

Property of office delivered to successor.

Sec. 7. It shall be the duty of the county treasurer of each county:—First. To receive and hold all school moneys as a special deposit, and to keep a separate account of their disbursment to the several school districts which shall be entitled to re-

Duty of county treasurer.

HeinOnline -- 1874 117 1874

ceive them, according to the apportionment of the county superintendent of common schools. Second. To notify the county superintendent of common schools of the amount of county school fund in the county treasury, subject to apportionment, whenever required; and to inform said superintendent of the amount of school moneys belonging to any other fund subject to apportionment. Third. To pay all warrants drawn on county or district school moneys, in accordance with the provisions of this act, whenever such warrants are countersigned by the district clerk and properly endorsed by the holders. Fourth. To make, annually, during the month of September of each year, a financial report, for the last preceding school and fiscal year ending with August 31st, to the county superintendent of common schools, in such form as may be required by him.

County superintendent.

Sec. 8. A county superintendent of common schools shall be elected in each organized county in this territory at the general election preceding the expiration of the term of office of the present incumbent, and every two years thereafter, who shall take office on the first Monday in December next succeeding his election, and hold for two years, or until his successor is elected and qualified. He shall take the oath or affirmation of office, and shall give an official bond to the county, in a sum to be fixed by the board of county commissioners of said county. The county commissioners of any county shall, by appointment, fill any vacancy that may occur in the office of county superintendent until the next general election.

Oath of office and bond.

Vacancy, how filled.

Apportionment of school moneys.

Sec. 9. The county superintendent shall apportion all school moneys to the school districts, in accordance with the provisions of this act, quarterly, and he may make apportionments at such other times as may be required or deemed necessary for

HeinOnline -- 1874 118 1874

the convenience of school officers. He shall certify to the several district clerks and county treasurers the amount so apportioned to the several districts, and the trustees shall draw their warrants on the county treasurer in favor of persons entitled to receive the same. Such warrant shall show for what purpose the money is required, and no such warrant shall be drawn unless there is money in the treasury to the credit of such district.

Powers and duties of county superintendent

Sec. 10. The county superintendent shall have power and it shall be his duty:—First. To visit each school in his county at least once a year. Second. To distribute promptly all reports, laws, forms, circulars and instructions which he may receive for the use of school officers and teachers, from the superintendent of public instruction. Third. To report to the superintendent of public instruction annually during the month of October for the school year ending August 31st, next preceding, such statistics as may be required of him. Fourth. To examine all persons who wish to become teachers in his county, and if they are competent and are of good moral character, he shall give such persons a certificate, certifying the relative standing in each study required by law to be taught in the public schools, and such other studies as may be authorized by the trustees of the district in which the applicant proposes to teach, and that he or she is qualified to teach in said county. Such certificate shall hold good for the term of two years, but may be revoked sooner by the superintendent for good cause. The superintendent shall receive the sum of two dollars from all teachers examined by him. Fifth. To enforce the course of study adopted by the territorial superintendent of public instruction. Sixth. To enforce the rules and regulations required in the examination of teachers. Seventh. To keep on file and preserve in his office the bien-

HeinOnline -- 1874 119 1874

nial report of the superintendent of public instruction. Eighth. To keep in a good and well bound book, to be furnished by the county commissioners, a record of his official acts. Ninth. To carefully preserve all reports of school officers and teachers, and, at the close of his term of office, deliver to his successor all records, books, documents and papers belonging to the office, taking a receipt for the same, which shall be filed in the office of the county clerk.

Penalty for failure to make reports.

Sec. 11. If the county superintendent fails to make a full and correct report to the superintendent of public instruction, of all statements required to be made by law, he shall forfeit the sum of one hundred dollars from his salary, and the board of county commissioners are hereby authorized and required to deduct therefrom the sum aforesaid, upon information from the superintendent of public instruction that such reports have not been made.

Power to administer oaths as to official matters.

Sec. 12. The county superintendent shall have power to administer oaths and affirmations to school trustees, assessors, collectors, teachers, and other persons, in all official matters connected with or relating to schools, but shall not have power to make or collect any charge or fee for so doing.

School officers appointed by; when.

Sec. 13. The county superintendent shall have power, and it shall be his duty, to appoint trustees and district clerk for any district which from any cause fails to elect at the regular time; to appoint trustees and district clerk to fill vacancies; to appoint trustees and district clerk for any new district. *Provided, however*, that when a new district is organized, such of the trustees and district clerk of the old district as reside within the limits of the new one shall be trustees and district clerk of the new one, and the vacancies in the old district shall be filled by appointment.

HeinOnline -- 1874 120 1874

Sec. 14. It shall be the duty of every county superintendent to inquire and ascertain whether the boundaries of school districts in his county are definitely and plainly described in the records of the county board of commissioners, and to keep in his office a full and correct transcript of such boundaries. In case the boundaries of districts are conflicting, or incorrectly described, he shall change, harmonize, and describe them, and make a report of such action to the commissioners; and, on being ratified by the commissioners, the boundaries and descriptions so made shall be the legal boundaries and descriptions of the districts of that county. The county superintendent shall furnish the several district clerks with descriptions of the boundaries of their respective districts.

Of school district boundaries.

Sec. 15. Each county superintendent, except when otherwise provided by statute, shall receive such salary and his reasonable traveling expenses, not to exceed ten dollars per district, to be estimated and allowed by the board of county commissioners, which shall be paid quarterly out of the county general fund, in the same manner as other county officers are paid. *Provided*, That such compensation shall not exceed the sum of one dollar for each school census scholar in his county, exclusive of traveling expenses, and that he shall be allowed in addition to his salary a sum for postage and expressage, payable out of the county school fund, equal to one dollar for each school district in his county.

Salary and expenses of county superintendent.

Sec. 16. For the purpose of organizing a new district or for the sub-division of or change in the boundaries of an old one, except as provided in section (14) fourteen, at least five heads of families must present a petition to the county superintendent, setting forth the boundaries of the new district asked

Organization of new district or changing old one.

HeinOnline -- 1874 121 1874

for, or the change of the boundaries desired, with the reasons for the same. The county superintendent shall, after giving due notice to all parties interested, transmit the petition to the board of county commissioners, with his approval or disapproval, and such changes in the boundaries as he may deem necessary or advisable. The commissioners shall establish the district as approved by the county superintendent, provided, that by a vote of the board they may establish the district in accordance with the original prayer of the petition, or with such modification as they may choose to make, or may reject it. In any case of alleged hardship, any head of family, parent or guardian, may make a statement of the facts to the board of commissioners, and if, in the judgment of the board, good cause be shown for such transfer, he may be transferred to another district.

County commissioners to establish district.

Of transfer to another district

Sec. 17. No new district formed by the sub-division of an old one shall be entitled to any share of the public moneys belonging to the old district, until a school has been actually commenced in such new district, and unless within eight months from the action of the commsssioners a school is opened, then the action making a new district shall be void, and all elections or appointment of trustees made in consequence of such action, and all rights and offices of the parties so elected or appointed shall cease and determine; and all taxes which may have been levied in such old district shall be valid and binding upon the real and personal property of the new district, and shall be collected and paid into the school fund of the district.

When new district entitled to public moneys.

Taxes of old district collected in new.

Sec. 18. When a new district is formed by the division of an old one, it shall be entitled to a just share of the school moneys to the credit of the old district, after the payment of all outstanding debts at the time when a school was actually commenced

New district formed by division of old one.

HeinOnline -- 1874 122 1874

in such new district; and the county superintendent shall divide and apportion such remaining moneys, and such as may afterwards be apportioned to the old district, according to the number of census children resident in each district, for which purpose he may order a census to be taken.

District partly in different counties, clerk of district to report, &c.

Sec. 19. Whenever a district is formed lying partly in two adjoining counties, the clerk of the district shall report to each county superintendent the number of children in the district residing in his county. In the same manner the trustees and teacher shall make a distinct and separate report of all school statistics; and a teacher's certificate, granted by the county superintendent of one county, shall be valid for both counties.

Power of trustees as to school property and transacting school business

Sec. 20. The board of trustees of each school district shall have custody of all school property belonging to the district, and shall have power in the name of the district, or in their own names as trustees of the district, to convey by deed all the interest of their district in or to any school-house or lot directed to be sold by vote of the district; and all conveyances of real estate made to the district or to the trustees thereof, shall be made to the board of trustees of the district, and to their successors in office. Said board, in the name of the district, shall have power to transact all business necessary for maintaining schools and protecting the rights of the district.

Meeting for electing school trustees.

Sec. 21. An annual school meeting for the election of school trustees and district clerk shall be held in each district on the last Saturday in August of each year, at the district school-house, if there be one, and if there be none, at a place to be designated by the board of trustees. The trustees shall post written or printed notices thereof, specifying the day, time, and place of meeting in at least three public places in the district, one of which shall be

Notice of election.

HeinOnline -- 1874 123 1874

the school-house, at least six days previous to the time of meeting; but no such meeting shall be illegal for the want of due notice. All elections shall be held by ballot, and the trustees shall have power to determine the hours which the ballot box shall be kept open, having giving due notice thereof, in the posted notice of election. Every elector legally qualified to vote at any general election, being a resident of the school district and a taxable inhabitant thereof, shall be entitled to vote. Any person offering to vote may be challenged by any legally qualified elector of the district, and the chairman of the board of trustees shall thereon administer to the person challenged an oath, in substance as follows: "You do swear (or affirm), that you are a citizen of the United States, that you are twenty-one years of age, according to the best of your information and belief; that you have resided in this territory twenty days next preceding this election, and that you are a taxable resident of this school district, and that you have not before voted this day." If he shall refuse to take the oath, his vote shall be rejected; and any person guilty of illegally voting shall be punished as provided in the general election law of this territory. The trustees shall be the inspectors and judges of election, and if they are not present at the time for opening the polls, then the electors present may appoint the officers of election. A poll and tally-list shall be kept by the clerk of the board of trustees, and, with the exceptions mentioned in this section, the election shall be conducted, as far as practicable, in the form and manner of the general election. Any one of the old trustees shall have power to administer to any trustees-elect the oath of office, and the clerk of election shall issue the certificate of election to any trustees-elect, who shall forward it, with the oath attached or indorsed thereon, to the county superintendent of public schools.

Elections—how held.

Qualification of electors.

Judges of election.

Manner of conducting.

HeinOnline -- 1874 124 1874

Sec. 22. In all organized districts in which elections have been previously held, one trustee shall be elected for the term of three years, and if there are vacancies to be filled, a sufficient number to fill them for the unexpired terms; and the ballots shall specify the respective terms for which each trustee is to be elected. In new districts acting under trustees appointed by the county superintendent, three trustees shall be elected for one, two and three years, respectively. Trustees-elect shall take office immediately after qualifying, and shall hold office until their successors are elected and qualified, or appointed by the county superintendent and qualified. Any trustee-elect who shall fail to qualify within ten days after being elected, shall forfeit all right to the office, and the county superintendent shall appoint to fill the vacancy.

Term of office of trustees.

Sec. 23. Whenever any new district is formed by ordinance of the board of commissioners, within thirty days thereafter a special school meeting may be called by notice of any three legal voters of said district, and such meeting shall be conducted in the manner and form prescribed in this act for the annual school meeting for the election of trustees. Such new district shall be considered organized whenever any two of the trustees elected shall have qualified; and the record of the district clerk shall be *prima facie* evidence of the legal organization of the district, and the district shall be designated by numbers.

When new district formed special school meeting called.

Sec. 24. No district school meeting, annual or special, shall be organized before nine o'clock A. M., or closed before twelve o'clock M., or kept open less than one hour, and in all districts in which the number of youth and children between four and twenty-one years of age equals or exceeds three hundred, the polls shall be kept open from two o'clock P. M., until sunset.

When polls to be open.

HeinOnline -- 1874 125 1874

Duty of district clerk to keep record, &c.

Sec. 25. It shall be the duty of the district clerk to record all proceedings of the board in a suitable record-book; to record in the same book the proceedings of the annual school meetings, or of special school meetings, and to keep an accurate and detailed account of all receipts and expenditures of school moneys. At each annual (school) meeting the district clerk shall present his record-book for public inspection; shall make a statement of the financial condition of the district, and of the action of the trustees, provided, that the record shall be open to the inspection of the public.

Powers and duties of school trustees.

Sec. 26. Every board of trustees, unless otherwise especially provided by law, shall have power, and it shall be their duty: First, to employ, and, for sufficient cause, dismiss teachers, mechanics, and laborers, and to fix, alter, allow, and order paid their salaries and compensation; second, to enforce the rules and general regulations of the territorial superintendent of public instruction for the government of schools, pupils, and teachers, and to enforce the course of study adopted in pursuance of territorial law; third, to provide and pay for school furniture and apparatus and such other articles, materials and supplies as may be necessary for school use or for the use of the school board; fourth, to suspend or expel pupils from school, and in cities or large towns to exclude from school (children) under six years of age, where the interests of the school require such exclusion; fifth, to rent, furnish, repair and insure school houses; sixth, to build or remove school houses, and purchase or sell school lots, when the trustees may be directed by a vote of the district so to do; seventh, to purchase personal property, and to receive, lease, and hold in fee, in trust for their district, town, or city, any and all real or personal property for the benefit of the schools thereof; eighth, to provide books for indi-

HeinOnline -- 1874 126 1874

gent children on the written statement of the teacher that the parents of such children are not able to purchase them; ninth, to require all pupils to be furnished with suitable books, as a condition of membership in the school; tenth, to exclude from school and school libraries all books, tracts, papers, or catechisms of a sectarian or political character; eleventh, to require every teacher to keep a school register; twelfth, to require teachers to make such annual report as may be required by the superintendent of public instruction; thirteenth, to make an annual report during the month of September of each year for the school year next preceding, to the county superintendent, in the manner and form and on the blanks prescribed by the superintendent of public instruction; fourteenth, to make a report, whenever required, directly to the territorial superintendent of public instruction, of the text books used in their schools.

School census taken annually

Sec. 27. It shall be the duty of the district clerk to take annually, between the twentieth and thirtieth days of November of each year, an exact census of all children and youth over four and under twenty-one years, residing in the district, and shall specify the number and sex of such children, and the names of their parents or guardians. He shall take, specifically and separately, a census of all children under four years of age, and shall specify the number and sex of such children. All children who may be absent from home attending boarding schools and private seminaries of learning shall be included by the district clerk in the census list of the city, town, or district in which their parents reside, and shall not be taken by the district clerk of the city, town, or district where they may be attending such private institution of learning. He shall make a full report thereof on the blanks furnished for that purpose, under oath, to the county superin-

Report of same.

HeinOnline -- 1874 127 1874

tendent, on or before the first day of December thereafter, and deliver a copy to the school trustees. The district clerk shall be paid by the board of trustees from the county school money, to the credit of the district, in the same manner as other contingent expenses are paid, at a rate not exceeding ten cents for each name returned by him.

Pay for taking.

Sec. 28. The district clerk of each district shall provide all school supplies authorized by this act, and shall keep the school house in repair during the time school is taught therein, and shall keep an accurate record of all expenses (incurred) by him on account of the school, which account shall be audited by a majority of the board of trustees, and paid out of the county school moneys of that district.

District clerk to provide supplies and keep account of expenses.

Sec. 29. Any board of trustees shall be liable, as trustees, in the name of the district, for any judgment against the district, for any salary due any teacher on contract, and for all debts legally contracted under the provisions of this act, and they shall pay such judgment or liabilities out of the school moneys to the credit of such district.

Liability of trustees for salary of teacher.

Sec. 30. Any board of trustees shall have power to make arrangements with the trustees of any adjoining district for the attendance of such children in the school of either district as may be best accommodated therein, and to transfer the school moneys due by apportionment to such children to the district in which they may attend school.

Attendance of children from other district.

Sec. 31. Every school, unless otherwise provided by special law, shall be open for the admission of all children between five and twenty-one years of age, residing in that school district, and the board of trustees shall have power to admit adults and children not residing in the district, whenever good reasons exist for such exceptions.

What children admitted.

Sec. 32. All schools shall be taught in the English language, and instructions shall be given in

HeinOnline -- 1874 128 1874

the following branches, viz: Reading, writing, orthography, arithmetic, geography, English grammar, and history of the United States, and such other studies as may be deemed necessary may be authorized by the trustees of the district. Instructions shall be given during the entire school course in manners and morals and the laws of health, and due attention shall be given to such physical exercises for the pupils, as may be conducive to health and vigor of body, as well as mind, and to the ventilation and temperature of school rooms. Branches taught.

Sec. 33. The education of children of African descent shall be provided for in separate schools. Upon the written application of the parents or guardians of at least ten such children to any board of trustees, a separate school shall be established for the education of such children, and the education of a less number may be provided for by the trustees, in separate schools, in any other manner, and the same laws, rules and regulations which apply to schools for white children shall apply to schools for colored children. Education of African children.

Sec. 34. No books, tracts, papers, catechisms, or other publications of a partizan, sectarian, or denominational character, shall be used or distributed in any schools, neither shall any political, sectarian, or denominational doctrine be taught therein; and any school district, the officers of which shall knowingly allow any school to be taught in violation of these provisions, shall forfeit all right to any county apportionment of school moneys, and, upon satisfactory evidence of such violation, the county superintendent shall withhold its county apportionment. Political and sectarian books, tracts, &c., excluded.

Sec. 35. The school-day shall be six hours in length, exclusive of an intermission at noon; but any board of trustees may fix, as the school-day, a less number of hours than six, *Provided*, it be not less Length of school day.

HeinOnline -- 1874 129 1874

than four, for any primary school under their charge, and any teacher may dismiss any and all scholars under eight years of age, in any incorporated village, town, or city, after an attendance of four hours a day, exclusive of an intermission at noon.

Pupils to comply with rules of school.

Sec. 36. All pupils who may be attending public schools shall comply with regulations established in pursuance of law for the government of such schools; shall pursue the required course of study, and shall submit to the authority of the teachers of such schools. Continued and willful disobedience, and open defiance of the authority of the teacher, shall constitute good cause for expulsion from school; and habitual profanity and vulgarity, good cause for suspension from school. Any pupil who shall in any way cut, deface, or otherwise injure any school-house, fences, or out-buildings thereof, shall be liable to suspension and punishment, and the parents or guardians of such pupil shall be liable for damages, on complaint of the teacher or trustees.

Causes for suspension or expulsion.

Reports to be made by teachers.

Sec. 37. Every teacher employed in any public school shall make an annual report to the county superintendent on or before September first next after the close of each school year, in the form and manner and on blanks prescribed by the superintendent of public instruction. A duplicate of such report shall be furnished to the district clerk. Any teacher who shall end any school-term before the close of the school-year shall make a report to the county superintendent immediately after the close of such term, and any teacher who may be teaching any school at the close of the school-year shall, in his or her annual report, include all statistics from the school register for the entire school-year, notwithstanding any previous report for a part of the year. Teachers shall make such additional reports as may be required, in pursuance of law, by the territorial superintendent of public instruction. No

HeinOnline -- 1874 130 1874

board of trustees shall draw any order or warrant for the salary of any teacher for the last month of his or her services, until the reports herein required shall have been made and received. Teachers not paid salary until report made.

Sec. 38. Every teacher shall keep a school register in the manner provided therefor, and no board of trustees shall draw any warrant for the salary of any teacher for the last month of his or her services in school at the end of any term or year, until they shall have received a certificate from the district clerk that the said register has been properly kept, the summaries made and statistics entered, or until, by personal examination, they shall have satisfied themselves that it has been done. Teachers shall faithfully enforce, in school, the course of study, and the regulations prescribed in pursuance of law; and if any teacher shall willfully refuse or neglect to comply with such requisition, then the board of trustees shall be authorized to withhold any warrant for salary due until such teacher shall comply therewith. No teacher shall be entitled to draw for salary and school moneys, unless such teacher shall be employed by a majority of the trustees, nor unless the holder of a legal county teacher's certificate, in full force and effect. Teacher to keep register. To enforce course of study. When salary shall not be drawn.

Sec. 39. In every contract, whether written or verbal, between any teacher and any board of trustees, a school month shall be construed and taken to be twenty school days, or four weeks of five school days each, and no teacher shall be required to teach school on Saturdays, the fourth day of July, the first day of January, Christmas day, and no deduction from the teacher's time or wages shall be made by reason of the fact that a school day happens to be one of the days referred to in this section, as a day on which school shall not be taught. Any contract made in violation of the provisions of this section shall have no force or effect as against the teacher. School month defined.

HeinOnline -- 1874 131 1874

Power of teacher over pupil in school and out.

Sec. 40. Every teacher shall have power to hold every pupil to a strict accountability in school, for any disorderly conduct on the way to or from school, or on the play-grounds of the school, or during intermission or recess; to suspend from school any pupil for good cause, *Provided*, That such suspension shall be reported by the teacher to the trustees, as soon as practicable, and their decision shall be final.

Duty of teacher to instruct in morals, &c.

Sec. 41. It shall be the duty of all teachers to endeavor to impress on the minds of their pupils the principles of morality, truth, justice, and patriotism; to teach them to avoid idleness, profanity, and falsehood, and to instruct them in the principles of a free government, and to train them up to a true comprehension of the rights, duties, and dignity of American citizenship.

School funds accruing from sales of lands.

Sec. 42. The principal of all moneys accruing to this territory, from the sale of any land which may hereafter be given by the congress of the United States, for school purposes, shall constitute an irreducible fund, the interest accruing from which shall be annually divided among all the school districts in the territory, proportionally to the number of youth or children in each, between the ages of four and twenty-one years, for the support of common schools in said districts, and for no other use or purpose whatever.

Tax for sustaining schools.

Sec. 43. For the purpose of establishing and maintaining common schools, it shall be the duty of the county commissioners of each county to lay an annual tax of not less than three, nor more than five mills, on the dollar, on all taxable property within their respective counties, as shown by the assessment rolls made by the county assessor for the same year; and to include the same in their warrant to the collector; and the said collector shall proceed to collect the said tax, in the same manner as the other

Tax, how collected.

HeinOnline -- 1874 132 1874

county tax is collected; and the said money so collected shall be paid over to the county treasurer, to be drawn in the manner prescribed in this act; neither shall it be lawful for any county treasurer to receive county orders in payment of county school tax, nor to pay out any school money on county orders. For the further support of common schools there shall be set apart by the county treasurer all moneys paid into the county treasury, arising from all fines for a breech of any law regulating license for the sale of intoxicating liquors, or for the keeping of bowling alleys, or billiard saloons, or of any penal laws of this territory. Such moneys shall be forthwith paid into the county treasury by the officer receiving the same, and be added to the yearly school fund raised by tax in each county and divided in the same manner.

Fines set aside for support of schools.

Sec. 44. (That it shall be the duty) of the county clerks of the several counties of the territory, to make a report to the county superintendent of common schools within their counties during the month of September of each year, of the school tax levied and the assessed valuation of the proper counties for that year, and that it be the duty of the clerk of the district court, at the close of every term thereof, to report to the county superintendent of the county in which said term shall have been holden, whether or not any fines, and if any, what ones, were imposed by the said court during the said term, and that it be the duty of the probate judge and of all justices of the peace, to report to the county superintendent of their respective counties, during the month of September, of each year, whether or not they have imposed and collected any fines during the preceding year; and if any, what ones, with the date at which the same were paid to the county treasurer; and all officers mentioned in this act who shall fail or neglect to perform any of the duties required by this

Officers to report fines collected.

Penalty for neglect of officers under this act.

HeinOnline -- 1874 133 1874

act shall be deemed guilty of a misdemeanor, and upon conviction before any court having competent jurisdiction thereof, shall be fined in any sum not less than twenty dollars, and not more than one hundred dollars for each neglect, and such fine shall be paid into the county treasury for the benefit of common schools in said county.

High school may be established.

Sec. 45. Whenever the interests of the districts require it, the board of trustees may establish a high school, employ a principal teacher and subordinate teachers, and grade the school into departments and classes.

Tax for new school-house, repairs, etc.

Submitted to vote, etc.

Notice of election in such case.

Sec. 46. The board of trustees of any district may, when in their judgment it is advisable, submit to the qualified electors of the district the question whether a tax shall be raised to furnish additional school facilities for said district, or to maintain any school or schools in such district, or for building one or more school-houses, or for removing or building additions to one already built, or for the purchase of globes, maps, charts, books of reference, and other appliances and apparatus for teaching, or for any or all of these purposes. Such election shall be called by posting notices in three of the most public places in the district for at least twenty days. Said notices shall contain the time and place of holding the election, the amount of money proposed to be raised, and the purpose or purposes for which it is intended to be used. The trustees shall act as judges to conduct the election, and it shall be held in all other respects, as nearly as practicable, in conformity with the general election law. At such elections, the

Form of ballot, form of return, etc.

ballots shall contain the words: "Tax, Yes," or "Tax, No." If a majority of the votes cast are "Tax, Yes," the officers of the election shall certify the fact to the district clerk, who shall at once proceed to copy from the last assessment roll of the county assessor the list of property liable to taxa-

HeinOnline -- 1874 134 1874

tion, situated in or owned by residents of his district, and shall deliver the same to the board of trustees, who may allow him a reasonable compensation therefor, out of the proceeds of said tax; said compensation not to exceed six dollars per day. The trustees shall, upon receiving the roll, deduct ten per cent therefrom for anticipated delinquencies, and then by dividing the sum voted, together with the estimated cost of assessing and collecting added thereto, by the remainder of the roll, ascertain the rate per cent required, and the rate so ascertained [using the full cent on each one hundred dollars in place of any fraction] shall be, and is hereby, levied and assessed to, on, or against the persons or property named or described in said roll; and it shall be a lien on all such property until the tax is paid, and said tax, if not paid within the time limited within the next section for its payment, shall be recovered by suit in the same manner and with the same costs as delinquent territorial and county taxes. The trustees, upon receiving any assessment roll from the district clerk, shall give five days notice thereof by posting a notice in three public places in the district, and shall sit for at least one day as a board of equalization, at such time and place as shall have been named in said posted notices; and they shall have the same power as county boards of equalization to make any change in said assessment roll.

Tax lien on property.

Notice when assessment roll received from clerk.

Sec. 47. As soon as the rate of taxation has been determined, as provided in the last preceding section, the trustees shall certify the same to the county clerk, who shall extend the same upon the general assessment roll of the county, and certify the same to the county treasurer, who shall proceed to collect the tax, in the same manner and at the same time and with the same power and authority to enforce payment of the same, as in the case of county

County treasurer to collect tax in same manner and time as other tax is collected.

HeinOnline -- 1874 135 1874

and territorial taxes. The county treasurer shall place any tax so collected to the credit of the district to which it belongs, and shall receive as compensation for collecting the same such sum, not more than five per cent of the tax collected, as may be allowed by the county commissioners; said compensation to be paid from the amount of said district tax so collected.

Apportionment of school moneys.

Sec. 48. All county school moneys apportioned by county superintendents of common schools shall be apportioned to the several districts in proportion to the number of school census children between four and twenty-one years of age, as shown by the returns of the district clerk, for the next preceding school year; *Provided*, That Indian children, who are not living under the guardianship of white persons, shall not be included in the apportionment list.

School moneys —how used.

Sec. 49. County school moneys may be used by the county superintendent and trustees for the various purposes as authorized and provided in this act, and for no other purpose.

School district not to have school moneys unless teacher holds certificate.

Sec. 50. No school district shall be entitled to receive any apportionment of county school moneys, unless the teacher employed in the schools of such districts shall hold legal certificates of fitness for the occupation of teaching, in full force and effect.

School must be kept to entitle district to moneys.

Sec. 51. No school district shall be entitled to receive any apportionment of county school moneys which shall not have maintained a free public school for at least three months during the next preceding school year; *Provided*, That any new district, formed by the division of an old one, shall be entitled to its apportionment, where the time that school was maintained in the old district, before division, and in the new one after division, shall be equal to at least three months.

HeinOnline -- 1874 136 1874

Duty of school officer going out of office.

Sec. 52. When any school officer is superseded by election or otherwise, he shall immediately deliver to his successor in office all books, papers and moneys pertaining to his office; and every such officer who shall refuse to do so, or who shall wilfully mutilate or destroy any such books (or papers) or any part thereof, or shall misapply any moneys intrusted to him by virtue of his office, shall be guilty of a misdemeanor, and shall be punished by a fine, in the discretion of the court, not exceeding one hundred dollars.

Penalty for his misconduct.

Oath of officer under this act.

Sec. 53. Every person elected or appointed to any office mentioned in this act shall, before entering upon the discharge of the duties thereof, take an oath to support the constitution of the United States, the organic act of this territory, and to promote the interests of education, and faithfully discharge the duties of his office, according to the best of his abilities. In case such officer has a written appointment or commission, his oath shall be endorsed thereon, otherwise it may be taken orally. In either (case) it may be sworn to before any officer authorized to administer oaths; and school officers are hereby authorized to administer all oaths relative to school business, appertaining to their respective offices, without charge or fee.

School trustee not to be interested in contract.

Sec. 54. No school trustee or other school officer shall be, directly or indirectly, interested in any contract made by the board of which he is a member; and any contract made in violation of this provision shall be null and void.

Fines, how collected.

Sec. 55. All fines and penalties, not otherwise provided for in this act, shall be collected by an action in any court of competent jurisdiction, and shall be paid into the county school fund immediately after collection.

Penalty for abusing teacher.

Sec. 56. Any parent, guardian, or other person, who shall upbraid, insult or abuse any teacher, in

HeinOnline -- 1874 137 1874

the presence of the school, shall be deemed guilty of a misdemeanor, and liable to a fine of not less than ten dollars nor more than one hundred dollars.

Penalty for disturbing school or school meeting.

Sec. 57. Any person who shall wilfully disturb any public school or any public school meeting, shall be guilty of a misdemeanor and liable to a fine of not less than ten nor more than one hundred dollars.

Penalty of district clerk failing to take census.

Sec. 58. In case any district clerk shall fail to take the census provided in this act, at the proper time, and if, through such neglect, the district shall fail to receive its apportionment of school moneys, said district clerk shall be individually liable to the district for the full amount so lost, and it may be recovered on a suit brought by any citizen of such district, in the name of and for the benefit of the district.

Disputes of school matters, how settled.

Sec. 59. All cases of dispute in relation to school matters, not properly belonging to courts of justice, may be referred, first, to the county superintendent, and appealed to the territorial superintendent, whose decision shall be final.

School year.

Sec. 60. The school year shall begin on the first day of September, and end on the last day of August.

Printing, etc., under this act.

Sec. 61. All printing or binding required under this act shall be executed in the form and manner and at the prices of other territorial printing, and shall be paid in like manner, out of the general fund of the territory.

Act, how known.

Sec. 62. This act shall be known (and) referred to as the Montana School Law, and no other title or reference shall be necessary.

Former acts repealed.

Sec. 63. That an act to provide for a system of common schools, approved, January 12th, 1872, and

HeinOnline -- 1874 138 1874

all acts and parts of acts conflicting herewith, are hereby repealed.

Sec. 64. This act shall take effect and be in force from and after its passage.

Approved February 13, 1874.

STATISTICS.

AN ACT to provide for the collection of statistics.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That it shall be the duty of the territorial auditor, annually hereafter, to prepare from the official reports, and from whatever other reliable sources to which he may obtain access, as full and intelligible tables of the statistics of Montana as may be in his power, and report the result of his labors to the governor, or the legislative assembly, if in session.

Duty of territorial auditor to compile and report.

Sec. 2. That in order to insure more perfect collection of the statistical information contemplated by this act, it shall be the duty of any territorial or county or other officer, to answer fully and promptly such special and general questions as the territorial auditor may propound in carrying out the intention of this act, and no person shall receive any compensation for answering such questions, except as hereinafter provided.

Duty of territorial and county or other officer to assist auditor

Sec. 3. That the several county and district assessors and deputy assessors shall annually, at the time of taking the list of personal property for taxation, take from each person, company, or corporation, in his own county or district, a statement of the number of acres he or they may have had the preceding year in wheat, rye, barley, corn, oats,

County and district assessors to collect statistics.

HeinOnline -- 1874 139 1874

peas, buckwheat, and potatoes, and the number of bushels each produced the preceding year; the number of acres in cabbage, rutabagas, turnips, and onions, and the number of pounds produced the preceding year; the number of acres of meadow in cultivation, and the number of tons of hay; the number of milch cows used in dairy, and the number of pounds of butter and cheese produced; the number of sheep, and the number of pounds of wool shorn; the number of apple or fruit trees, and the number of bushels of each kind of fruit produced; the number of ranches, and wages paid per month; gross receipts from placer mines, and wages paid per day; number of quartz mills, and gross receipts of same, with wages paid per day; number of grist mills, and number of sacks of flour manufactured; number of saw mills, and number of thousand feet of lumber cut; number of tan yards, and number of sides of leather manufactured; number of foundries, and number of tons of castings produced; number of wagons manufactured; number of carriages manufactured; number of carpenter shops, and wages paid per day; number of harness and saddlery shops, and value of manufactures; number of blacksmith shops, and wages paid per month; number of silver-smith shops, and wages paid per month; number of coal mines, and number of bushels taken out; number of reduction furnaces, and the number of pounds of bullion produced, and the value thereof; number of butcher shops, and the number of beeves, calves, sheep, and hogs shaughtered; number of pounds of bacon cured; number of births and deaths, and the number of deaths resulting from natural causes, and the number from violence the previous year. The assessor is hereby authorized to administer all oaths necessary to carry into effect the provisions of this act.

Assessor to administer necessary oaths.

HeinOnline -- 1874 140 1874

Sec. 4. The several county or district assessors shall make return of all blanks containing statistical information, together with a full abstract of the same, to the territorial auditor, on or before November first, annually; and the territorial auditor is hereby required to cause to be printed all the necessary blanks to enable the assessors to carry into effect the provisions of this act, and to furnish the same to the clerks of the several counties, and the clerks of the several counties are hereby required to cause to be distributed to the assessor or assessors of their respective counties the said blanks, and take a receipt for the same.

Assessor to return statistics to auditor.

Auditor to have blanks printed.

County clerks to receipt for and distribute blanks.

Sec. 5. The clerks of the several counties shall be entitled to receive each year two dollars for distributing the blanks, as provided in this act, out of the contingent [fund] of their respective counties. Each assessor shall be entitled to receive twenty cents for each blank returned to the territorial auditor, containing statistical information, out of the territorial treasury, out of any money not otherwise appropriated, and the blanks so returned shall be the voucher upon which the territorial auditor shall issue his warrant upon the territorial treasurer.

Compensation of officers under act.

Auditor to issue warrant in payment of fees.

Sec. 6. Any assessor failing to perform his duty, as provided in this act, shall be deemed to have forfeited his office, and be liable to a fine of not more than four hundred, nor less than two hundred dollars. Any clerk failing to perform his duty, as provided in this act, shall be liable to a fine of not less than ten dollars, nor more than fifty dollars. And the territorial auditor is hereby authorized to proceed by a suit at law against any assessor or clerk violating the provisions of this act.

Penalties of officers for neglecting duty under this act.

Sec. 7. All acts and parts of acts in conflict with this are hereby repealed.

Repealing clause.

Sec. 8. This act shall take effect and be in force from and after its passage.

Approved February 12th, 1874.

HeinOnline -- 1874 141 1874

TOLL ROADS AND BRIDGES.

AN ACT in relation to toll roads and bridges.

Be it enacted by the Legislative Assembly of the Territory of Montana:

County commissioners not to authorize toll collected.

Section 1. That the county commissioners of the several counties of the Territory of Montana shall not be permitted to authorize any person or persons, company or corporation to collect toll on any road or bridge for the benefit of such person or persons, company or corporation.

Contracts for toll annulled.

Sec. 2. If there shall be any contract or agreement between county commissioners and any person or persons, company or corporation, by which the same collect toll, such contract or agreement is hereby revoked and made null and void.

Toll roads not chartered declared free public highways.

Sec. 3. All public roads or highways claimed by any person or persons, company or corporation, on which toll is collected or taken without having a charter for the same, granted by the legislative assembly of the Territory of Montana, may be taken possession of by the county commissioners of the county in which the same may be; which road shall thereafter be a free public highway.

Penalty for refusing to surrender or obstructing public road.

Sec. 4. Any person or persons, company or corporation who shall refuse to surrender such road to the county commissioners of the county in which the same may be, for the use and benefit of the public travel, or shall in any way obstruct or cause to be obstructed, destroy or cause to be destroyed any such road, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in a sum not less than one hundred dollars, or more than one thousand dollars, or imprisonment in the county jail not less than three months, or more than one year, or both such fine and imprisonment at the discretion of the court.

HeinOnline -- 1874 142 1874

Sec. 5. Any person or persons within this territory, now in the possession of any road or bridge as agent of any corporation, or as owner of any franchise thereon, who shall permit the same to become and remain out of repair, shall forfeit such franchise; and any such agent or owner who shall obstruct or impair any such road or (any) bridge thereon or shall interfere with any such bridge so that the same shall not be convenient and safe for all public travel, shall be deemed guilty of a misdemeanor and on conviction thereof, shall be punished by a fine, not exceeding one thousand dollars, or by imprisonment not exceeding six months; or by both such fine and imprisonment; and all roads, highways and bridges now or heretofore held by virtue of any charter, franchise or other corporate right, upon the expiration of such franchise, are hereby declared public highways and with all the improvements thereon, shall be, from the time of the expiration of such franchise, under the direction of the board of county commissioners of the county in which such road or bridge or other improvement may be.

Franchise of road or bridge forfeited, remaining out of repair.

Penalty for interfering with road or bridge.

Chartered road or bridge public after franchise expires.

Sec. 6. This act shall take effect and be in force from and after its passage.

Approved February 13, 1874.

HeinOnline -- 1874 143 1874

SPECIAL LAWS.

AN ACT to authorize the county commissioners of Deer Lodge county, to remove the dead from the cemetery within the limits of the town of Deer Lodge.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Dead to be removed from limits of town of Deer Lodge to cemetery.

Section 1. The county commissioners of Deer Lodge county, Montana territory, are hereby authorized to cause to be removed all the dead buried in the cemetery within the limits of the town to the cemetery, situate one mile west of said town.

Moneys in town site fund used to pay expenses of removal.

Sec. 2. The said commissioners are hereby authorized to appropriate any moneys in the town site fund to pay the expenses of such removal, and after all the remains shall have been removed, the ground now occupied by said cemetery shall be dedicated to public use, and disposed of in the same manner as town lots are disposed of belonging to said town.

Ground now occupied by cemetery to be dedicated to public use.

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved February 13, 1874.

AN ACT to authorize the county commissioners of Deer Lodge county to appoint a fire warden, and for other purposes.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Commissioners of Deer Lodge county authorized to appoint fire warden for town of Deer Lodge.

Section 1. That the county commissioners of Deer Lodge county be and they are hereby authorized to appoint, in and for the town of Deer Lodge, a fire warden, whose duty it shall be to examine all chimneys, stoves, stove-pipes, ovens, furnaces, boilers, and appurtenances thereunto belonging.

Duty of fire warden.

HeinOnline -- 1874 144 1874

Sec. 2. When any chimney, stove, stove-pipe, oven, furnace, boiler, or appurtenance thereunto belonging are defective, out of repair, or so placed in any building as to endanger it or any other building by communicating fire thereto, the fire warden, on complaint of any citizen, being satisfied by examination, or other proof, that such complaint is well founded, shall give written notice to the owner or occupant of such building, and if he neglects, for the period of three days, to remove or repair the same effectually, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, before any court having jurisdiction, shall be fined in any sum not less than ten nor more than one hundred dollars. All fines collected under the provisions of this act shall be paid into the county treasury for the benefit of Deer Lodge fire company No. 1.

Proceeding by any duty of, when complaint made of unsafe chimney, &c.

Penalty for keeping unsafe or dangerous chimneys, &c., after notice by fire warden.

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved January 31st, 1874.

AN ACT to provide for the support and maintenance of the Deer Lodge fire department.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That the county commissioners of Deer Lodge county be and they are hereby authorized to levy a special tax, not to exceed one mill on the dollar of the assessable property within the limits of the town of Deer Lodge, for the support and maintenance of the Deer Lodge fire department.

Commissioners of Deer Lodge county authorized to levy tax to support Deer Lodge fire department.

Sec. 2. That the said county commissioners shall, at their next regular meeting in March, 1874, levy

HeinOnline -- 1874 145 1874

said tax for the year 1874, and thereafter it shall be levied in the same manner and at the same time as are the general taxes of said county.

Manner in which tax shall be levied.

Sec. 3. It is hereby made the duty of the county treasurer of Deer Lodge county to collect said tax in the same manner and at the same time as other taxes are collected.

County treasurer to collect tax.

Sec. 4. This tax shall be known as the "Fire tax," and shall be paid by the county treasurer to the treasurer of the Deer Lodge fire company No. 1.

Tax known as fire tax. Same to whom paid.

Sec. 5. That the treasurer of said fire company, before any of said tax shall be paid to him as hereinbefore provided, shall file, in the office of the county clerk of Deer Lodge county, a bond executed to the board of county commissioners of Deer Lodge county, with two or more sufficient sureties, to be approved by said board of commissioners, in such penal sum as they may direct, conditioned, that he will faithfully and honestly pay out and disburse all moneys that may be paid by virtue of his office, under the order of said fire department.

Treasurer of fire department to give bond.

Sec. 6. It is hereby made the duty of the treasurer of said fire company to make a fair, correct, and complete statement of his receipts and expenditures as such treasurer, to the board of county commissioners at their annual meeting, or at such time as they may direct.

Same officer to make statement to county commissioners.

Sec. 7. That the limits of said town of Deer Lodge shall include what is known as Clagett and Dixon's addition, and all other additions thereto.

Limits of town.

Sec. 8. This act shall be in force from and after its passage.

Approved January 28th, 1874.

HeinOnline -- 1874 146 1874

AN ACT to authorize the County Commissioners of Deer Lodge county to audit certain claims.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Sec. 1. That the county commissioners of Deer Lodge county be and they are hereby authorized to audit certain claims held by John Donnhour, Jerry B. Wilcox, and others, for labor and supplies furnished in building the prison and Deer Lodge road. *Provided*, That the entire amount shall not exceed the sum of one thousand dollars. All warrants allowed under the provisions of this act shall be paid out of the general fund of said county.

Commissioners of Deer Lodge county to audit claims of Donnhour and others.

Sec 2. If the claims of said parties named in section one of this act shall exceed the sum of one thousand dollars, the said county commissioners shall pay the same *pro rata*.

Claims paid *pro rata* if more than $1,000.

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved February 9, 1874.

AN ACT to authorize the County Commissioners of Deer Lodge county to levy a special tax for the purpose of building, buying and repairing bridges.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That the county commissioners of Deer Lodge county be and they are hereby authorized to levy a special tax, not to exceed three (3) mills on the dollar, for the term of three (3) years, upon all property in said county liable to taxation, for the purpose of building, buying and repairing bridges in said county.

Commissioners of Deer Lodge county authorized to levy tax to buy bridges, etc.

HeinOnline -- 1874 147 1874

May purchase all bridges in county.

Sec. 2. That said commissioners be and they are hereby authorized to purchase any and all toll bridges in said county. *Provided*, that no moneys shall be paid out, under the provisions of this act, for any bridge or bridges, until the district attorney of the second judicial district, upon an examination by him made, shall report to said board that, in his opinion, the title of the person or persons, corporation or corporations, proposing to sell the same, is valid.

District attorney to examine title, &c.

Surplus money to go to county fund.

Sec. 3. That after buying and repairing all such bridges as the said commissioners may deem in their judgment sufficient and proper, all surplus moneys so collected be transferred to the county fund.

Sec. 4. This act shall take effect and be in force from and after its passage.

Approved February 11, 1874.

AN ACT to authorize the County Commissioners of Gallatin county to appoint a Fire Warden in the town of Bozeman, and for other purposes.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Commissioners of Gallatin county may appoint fire warden for Bozeman.

Section 1. That the county commissioners of Gallatin county be and they are hereby authorized to appoint, in and for the town of Bozeman, a fire-warden, whose duty it shall be to examine all chimneys, stoves, stove-pipes, ovens, furnaces, boilers and appurtenances thereto belonging.

Duty of fire warden.

Sec. 2. When any chimney, stove, stove-pipe, oven, furnace, boiler, or appurtenances thereto belonging, are defective, out of repair, or so placed in any building as to endanger it or any other building by communicating fire thereto, the fire-warden,

HeinOnline -- 1874 148 1874

on examination or other satisfactory proof, shall give written notice to the owner or occupant of such building or premises, and if he neglects for the period of three days to remove or repair the same effectually, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than ten dollars, nor more than one hundred dollars. All fines collected under the provisions of this act shall be paid into the county treasury for the benefit of the fire department of the town of Bozeman.

To give notice to owner or occupant if chimney, &c., is unsafe.

Penalty for keeping dangerous chimney, &c., after notice by warden.

Approved February 13th, 1874.

AN ACT to authorize the county commissioners of Lewis and Clarke county to establish fire limits within the town of Henael, and other purposes.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Sec. 1. The board of county commissioners of Lewis and Clarke county, at such time as they may specially convene, shall have power to cause to be surveyed, or the boundaries thereof otherwise clearly and definitely designated and established, and a plat or other designation thereof made and recorded, of such an area or portion of the town of Helena as they may deem proper, which district, so bounded, designated and established, shall be known as the fire limits of said town.

County commissioners of Lewis and Clarke to establish fire limits in town of Helena.

Sec. 2. That it shall not be lawful for any person, company or corporation, within such fire limit, to erect any dwelling, storehouse, warehouse, outhouse, or other building or erection without first submitting to the board of county commissioners, or to any two members of such board during vacation, a general plan of the same, designating the place

Unlawful to erect buildings without consent of commissioners.

HeinOnline -- 1874 149 1874

where the same is proposed to be erected, and the kind of material out of which the same is to be built, and procuring the consent in writing of such board of county commissioners, or two members thereof, to such erection. And any person building or erecting any building aforesaid, within the fire limits aforesaid, after the same shall have been established as aforesaid, shall be deemed guilty of a misdemeanor, and upon conviction thereof, before any court of competent jurisdiction, shall be fined in any sum not exceeding one thousand dollars, or imprisonment in the county jail, not exceeding twelve months, or by both such fine and imprisonment; and such building shall be deemed a public nuisance, and be abated by the sheriff of the county, under the order of the district court.

Penalty for erecting buildings in violation of act.

Sec. 3. That such board of county commissioners shall have power to open, alter, abolish, widen, extend, establish, grade and otherwise keep in repair, all streets, avenues, alleys and lanes, within the limits of such fire district. And when it shall become necessary for the safety of such town, they may, upon petition of one hundred householders of such town, condemn and declare vacant any tract of land, or extend the width of any street or part of street, to any width they may deem proper, not exceeding two hundred feet. And when it shall be necessary to take private property for public use, in so opening, altering, widening, establishing or condemning any tract of land as aforesaid, the county shall make just compensation for the property so taken and condemned. And when the amount of such compensation cannot be agreed on between the county commissioners and the owners thereof, the county commissioners shall cause the same to be assessed by a jury of disinterested persons, who shall be competent jurors of the county. The jury shall, before entering upon the discharge

Power of commissioners as to streets and alleys.

May condemn land.

Private property may be taken when necessary.

Proceedings in case of condemnation.

HeinOnline -- 1874 150 1874

of their duties, be duly sworn to discharge their duties as such, without favor, and a just and true assessment of damages make, to the best of (their) abilities. And in assessing such damages the jury shall take into such consideration any benefit which such improvements will result in to the balance of any claimant's property, and shall return their inquest in writing to the county commissioners or the clerk of the board. *Provided*, that in all cases, either party may appeal to the district court from any inquest or award made as aforesaid, but such appeal shall not in any manner delay the opening, widening, etc., of any street, or condemning any ground as aforesaid, but the adequacy of damages alone shall be considered. And upon the abolition of any street where the title of the land shall not be vested in some other person the same shall belong to such county, and may be disposed of in the manner of other county property.

Penalty for keeping unsafe flues, etc.

Sec. 4. That any person who shall so negligently keep and maintain any flue, pipe, fire or fire-place, in any building or premises within the limits of such fire district of said town, after the same shall have been established, as provided in the first section of this act, that the same shall be unsafe and in danger of communicating fire to such building or adjoining buildings, shall be deemed guilty of maintaining a public nuisance, and on conviction thereof shall be fined in any sum not exceeding one hundred dollars, or imprisonment in the county jail not exceeding ten days, or by both such fine and imprisonment.

Penalty for keeping combustible or explosive materials carelessly.

Sec. 5. Every person who shall, within such fire limits as provided in section one of this act, after the same shall have been established, as aforesaid, place and keep large quantities of wood, hay, straw, powder, or other combustible or explosive materials, so as to endanger the dwelling-houses or

HeinOnline -- 1874 151 1874

other buildings in the neighborhood from fire, shall be deemed guilty of establishing, or keeping and maintaining a public nuisance, and shall, upon conviction thereof, before any court of competent jurisdiction, be fined in any sum not to exceed one hundred dollars.

Sec. 6. This act shall take effect from and after its passage.

Approved January 24th, 1874.

AN ACT to provide for the redemption of the funded debt of Lewis and Clarke county.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Commissioners of Lewis and Clarke county may issue and sell bonds.

Section 1. The county commissioners of the county of Lewis and Clarke are here authorized to issue bonds and sell the same to the highest bidder for cash, in accordance with the provisions of this act.

Provisions and directions as to bond.

Sec. 2. The bonds authorized to be issued in section one of this act shall bear interest at a rate of ten per cent per annum, and shall be of the denomination of one hundred, five hundred, and one thousand dollars, each, in the discretion of the board of county commissioners, and shall be signed by the chairman of the board of county commissioners, and the county treasurer, and shall be sealed and countersigned by the county clerk.

Commissioners to advertise notice of sale of bonds.

Sec. 3. The county commissioners of the county of Lewis and Clarke shall cause to be advertised in one or more newspapers of said county, for so long a time as may be necessary, a notice stating at what time any sale of bonds in accordance with the provisions of this act will take place.

HeinOnline -- 1874 152 1874

Sec. 4. The bonds authorized to be issued by this act shall be redeemable at the pleasure of the county, at any time after three years, and payable within seven years from the date of their issue. When bonds redeemable and payable.

Sec. 5. The proceeds of the sale of said bonds shall be paid into the "Sinking Fund," and shall be applied to the payment of the interest on the bonds of said county as the same may become due and payable, and to the redemption of the bonds of said county now outstanding, which may become due and payable, and for the redemption of which a sufficient sum has not accumulated under and by virtue of the provisions of "An Act relating to counties and county officers," approved January 12th, 1872. Proceeds of sales how disposed of.

Sec. 6. All other acts and parts of acts in conflict with the provisions of this act, be and the same are hereby repealed. Acts repealed.

Sec. 7. This act to take effect and be in force from and after its passage.

Approved February 13th, 1874.

AN ACT to provide for the support and maintenance of the Helena fire department.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That the county commissioners of Lewis and Clarke county be and they are hereby authorized to levy a special tax, not to exceed one mill on each dollar annually, upon all property within the town of Helena, liable to taxation, both real and personal, for the support and maintenance of the Helena fire department. Commissioners of Lewis and Clarke county authorized to levy tax to support Helena fire department.

HeinOnline -- 1874 153 1874

Mode of levying tax.

Sec. 2. That the tax provided in the preceding section shall be levied in the same manner and at the same time as are the general taxes of said county of Lewis and Clarke; and it is hereby made the duty of the county treasurer of said county to collect said tax in the same manner and at the same time as other taxes are collected in said county.

County treasurer to collect tax.

Tax known as "Fire Tax," same to whom paid.

Sec. 3. That this tax shall be known as the "Fire Tax," and shall be paid by the county treasurer to the treasurer of the Helena fire department.

Treasurer of fire department to give bond.

Sec. 4. That the treasurer of the Helena fire department, before said tax shall be paid to him as hereinbefore provided, shall file in the office of the county clerk of said county a bond, executed to the board of county commissioners of said county, with two or more sufficient sureties to be approved by the board, and in such penal sum as they may direct, conditional that he will faithfully and honestly disburse and pay out said sum of money so paid to him by the county treasurer as aforesaid; and the said treasurer of the Helena fire department is hereby required to make a fair, correct and complete report of the expenditures of all moneys, received by him from the county treasurer, to the county commissioners of said county, at their annual meeting or at such other times as they may direct.

Same officer to make report to county commissioners.

Sec. 5. This act shall take effect and be in force from and after its passage.

NOTE FROM THE SECRETARY.—The foregoing act having been presented to the governor of the territory for his approval, was, on the 17th day of January, 1874, returned to the council, in which it originated, without his approval and with his objections thereto; the objections were entered at large upon the journal of the council. The vote by which the bill was passed was then reconsidered, and on the question "Shall this bill pass, the objections of the governor to the contrary notwithstanding?" it was passed by a two-thirds vote of the council.

The act was then immediately sent to the house of representatives, together with the objections of the governor; the vote by which the act was passed by the house was then reconsidered, and upon the question, "Shall this bill pass, the objections of the governor to the contrary notwithstanding?" it was also passed by a two-thirds vote of the house.

HeinOnline -- 1874 154 1874

AN ACT in relation to a fire tax in the town of Helena, Lewis and Clarke county.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That for the year one thousand eight hundred and seventy-four, a special tax, known as the "Fire Tax," shall be levied by the board of county commissioners of Lewis and Clarke county, at the next regular session thereof, in accordance with the provisions of an act entitled, "An Act to provide for the support and maintenance of the Helena fire department," which shall be collected in the same manner as provided in said act, and thereafter the said tax shall be levied in the manner provided in said act. Fire tax levied in town of Helena for year 1874.

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved February 13, 1874.

AN ACT to amend an act entitled "An Act authorizing the county commissioners of Missoula county to levy a special tax, for the purpose of building, buying, and repairing bridges."

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. That an act entitled "An Act authorizing the county commissioners of Missoula county to levy a special tax, for the purpose of building, buying, and repairing bridges," approved December 30, 1871, be and the same is hereby amended so as to read as follows: Act amended.

Sec. 1. That the county commissioners of Missoula county be and they are hereby authorized to

HeinOnline -- 1874 155 1874

Commissioners of Missoula county authorized to levy special tax to buy and build bridges, &c.

levy a special tax, not to exceed five (5) mills on the dollar, for the term of eight (8) years, upon all property in said county liable to taxation, for the purpose of building, buying, and repairing bridges in said county, and for such other purposes as are hereinafter mentioned: *Provided*, that not more than four thousand one hundred dollars of the said tax, collected under the provisions of this act, shall be expended for the purpose of building a bridge across the Hell Gate river, at or near Missoula Mills, in said county.

Commissioners authorized to buy toll roads, bridges, &c.

Sec. 2. That the said commissioners be and they are hereby authorized to purchase any or all toll roads or toll bridges in said county: *Provided*, that said board of commissioners shall deem such purchase conducive to the interest of the people of said county; *And provided, further*, that no contract for the purchase of any grade, road, bridge, or franchise shall be made, nor shall any purchase of them or any of them be made, until after an examination of the title of the person proposing to sell the same, the district attorney of the second judicial district shall report to said board of county commissioners that such title of the proposed seller, in his opinion, is valid.

Opinion of district attorney as to title to be obtained.

Sec. 3. That the moneys so collected shall be known as the "Bridge and Road Purchase Fund," and the said board of commissioners be and they are hereby autherized to draw warrants upon said fund, for the purposes set forth in sections one and two of this act, and that said warrants shall draw interest at the rate of ten per cent per annum: *Provided*, that the said board of commissioners shall not issue warrants to exceed in the aggregate the sum of three thousand dollars in any one year.

Provisions for payment.

Limitations as to issue of warrants for such purposes.

Repealing clause.

Sec. 4. That all acts and parts of acts in conflict with this act are hereby repealed.

HeinOnline -- 1874 156 1874

Sec. 5. This act shall take effect and be in force from and after its passage.

Approved January 24th, 1874.

AN ACT to amend an act entitled "An Act to incorporate the city of Virginia, approved December 30, 1864.

Be it enacted by the Legislative Assembly of the Territory of Montana:

Section 1. The city council of the said city of Virginia shall have power and authority to levy and collect taxes for city purposes upon all taxable real property within the limits of said city, not exceeding one per cent per annum upon the assessed value thereof, and may enforce the payment of the same in any manner that may be prescribed by ordinance, not repugnant to the constitution of the United States or the organic act of this territory.

City council may levy tax on real property for city purposes.

Sec. 2. Section 1, of article V., of an act entitled "An Act to incorporate the City of Virginia," approved December 30, 1864, is hereby repealed.

Sec. 3. This shall be deemed a public act, and shall take effect and be in force from and after its passage.

Approved February 13th, 1874.

HeinOnline -- 1874 157 1874

A BIL for an act to incorporate the town of Bozeman.

Be it enacted by the Legislative Assembly of the Territory of Montana :

ARTICLE FIRST.—*Of Boundaries.*

Section 1. That the inhabitants of the town of Bozeman, county of Gallatin, and territory of Montana, be and are hereby constituted a body politic and corporate by the name and style of Bozeman; and by that name shall have perpetual succession; may sue and be sued, plead and be impleaded in all courts of law and equity; and may have and use a common seal, and alter the same at pleasure.

Sec. 2. That a line which shall bound and embrace all land and territory within the limits of the original map or plat of the town of Bozeman, filed in the recorder's office of the county of Gallatin, and which shall embrace and bound all tracts of land adjoining said land embraced within said map or plat that have been or may be hereafter laid out into town lots, and duly recorded as additions to the town, shall be known as the town boundaries or town limits, and all territory within such limits shall be town property.

Sec. 3. The inhabitants of said town, by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, to defend and be defended in courts of law and equity, and in all actions whatsoever, to purchase and hold and receive property, real and personal or mixed, with or beyond said town for burial grounds, and for other purposes for the use of the inhabitants of said town, not contrary to the remaining provisions of this act.

ARTICLE SECOND.—*Of the Town Council.*

Section 1. There shall be a town council to consist of a mayor and a board of aldermen.

Sec. 2. The board of aldermen shall consist of two (2) members from each ward, to be chosen by the qualified voters

HeinOnline -- 1874 158 1874

of each respective ward. They shall hold their offices for one year, and until others shall be legally chosen and qualified.

Sec. 3. No person shall be an alderman unless at the time of his election he shall be a freeholder of the town, and have resided within the limits of the town six months immediately preceding his election, and shall have the requisite qualifications to vote for members of the legislature of the territory and be a citizen of the United States.

Sec. 4. If any alderman, after his election, remove from the ward for which he was elected, his office shall be declared vacant.

Sec. 5. The mayor and aldermen shall serve without compensation until the city shall have (3,000) three thousand inhabitants, and when the town shall have received such population, the mayor and aldermen shall have such compensation as the town council shall determine.

Sec. 6. The town council shall judge of the qualification and returns of its own members, and shall determine all contested elections under this act.

Sec. 7. A majority of the town council shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members under such penalties as may be prescribed by ordinance.

Sec. 8. The town council shall have power to determine the rules of its proceedings, punish its members for disorderly conduct, and, with the concurrence of two-thirds of the members elected, expel any member.

Sec. 9. The town council shall keep a journal of its proceedings, and, from time to time, publish the same; and the yeas and nays, when demanded by any member present, shall be entered upon the journal.

Sec. 10. No alderman shall be appointed to any office under the authority of the city which shall have been created, or the emoluments of which shall have been increased during the time for which he shall have served in the capacity of alderman.

Sec. 11. When a vacancy shall occur in the board of aldermen from any cause, the mayor shall appoint some suitable

HeinOnline -- 1874 159 1874

person possessing the requisite qualifications to fill such vacancy, said person so appointed to hold his office until his successor is elected and qualified.

Sec. 12. The mayor and aldermen, before entering upon the duties of their respective offices, shall each take and subscribe an oath or make affirmation that they will support the constitution of the United States and the organic act of this territory, and that they will well and truly perform the duties of their office to the best of their skill and ability.

Sec. 13. Whenever there shall be a tie in the election of aldermen, the judges of the election shall certify the fact to the mayor, who shall determine the same by lot in such manner as shall be prescribed by ordinance.

Sec. 14. There shall be twelve stated meetings of the town council in each year, at such times and places as may be subscribed by the town council.

ARTICLE THIRD.—*Of the Executive Officers.*

Section 1. The chief executive officer shall be a mayor, who shall be elected by the qualified voters of the town, and shall hold his office for one year, and until his successor is elected and qualified.

Sec. 2. No person shall be elegible to the office of mayor who shall not have been a resident of the town for one year next preceding his election, or who shall be under twenty-five years of age, or who shall not, at the time of his election, be a citizen of the United States.

Sec. 3. If any mayor, during the term for which he shall have been elected, remove from the town of Bozeman, or shall be absent from the town for the space of more than three months, his office shall be deemed to be vacant, and the town council shall order an election to fill such vacancy.

Sec. 4. When two or more persons shall have an equal number of votes for mayor, the judges of election shall certify the same to the town council, who shall proceed to determine the same by lot in such manner as may be prescribed by ordinance.

HeinOnline -- 1874 160 1874

Sec. 5. Whenever any election for mayor shall be contested, the town council shall determine the same as may be prescribed by ordinance.

Sec. 6. Whenever any vacancy shall happen in the office of mayor, it shall be filled by election.

ARTICLE FOUR.—*Of Election.*

Section 1. On the first Monday in April, A. D. 1874, an election shall be held in said town for one mayor, who shall be *ex-officio* public magistrate for the town of Bozeman, and two alderman for each ward, who shall act as street commissioners in their respective wards, without pay. And forever thereafter, on the first Monday in April of each year, there shall be an election of one mayor, and two aldermen for each ward, for said term.

Sec. 2. Immediately after the election and qualification of the mayor of said town, he shall appoint the following officers, to-wit: One town marshal, who shall be day watch and constable; one or more night watches, as occasion may require; one town clerk; one town treasurer; one town attorney, who shall hold the respective offices for the term of one year, and until successors are appointed and qualified. The town attorney, the town clerk, and the town treasurer shall serve without compensation from the city funds, until there shall be three thousand inhabitants in said town, when the town council shall determine the compensation to which they shall be entitled. The marshal shall be entitled to such fees as are allowed by law to sheriffs for similar services, and shall be entitled to no other compensation.

Sec. 3. Every male person who is of the age of twenty-one years, and who is entitled to vote for members of the legislature, and who owns property within the town limits, or personal property within such limits that is habitually kept there, or who carries on any business in said limits that the laws now impose a license upon, shall be entitled to vote at any town election upon any question to be voted upon.

HeinOnline -- 1874 161 1874

ARTICLE FIVE.—*Powers of the Town Council.*

Section 1. The town council shall have power and authority to levy and collect taxes for town purposes, as herein stated, upon all taxable property, real, mixed, and personal, within the limits of the town, not exceeding $2,500 per annum, and may enforce the collection of the same in any manner that may be prescribed by ordinance, not repugnant to the Constitution [of the United States], or the organic act of this territory. The taxes, fines, forfeitures, and licenses raised under this act shall be applied, first, toward payment of the town watch, herein provided for; then toward the prevention of fires, as herein provided for; then toward street improvement, as herein provided for.

Sec. 2. The town council shall have authority to appoint all officers, except such as are elected or otherwise provided for in this act, but shall not allow compensation to any except as herein stated.

Sec. 3. The town council shall have power to require of all officers, appointed or elected in pursuance of this act, bond, with penalty and security, for the faithful performance of their respective duties as may be deemed expedient, and also to require of all officers, appointed or elected, as aforesaid, to take such oath or affirmations as the town council may prescribe, for the faithful performance of the duties of their respective offices before entering upon the discharge of the same. To borrow money, on the credit of the town: *Provided*, that no sum of money shall be borrowed at a greater interest than fifteen per cent per annum, nor shall any sum or sums be borrowed, as aforesaid, until the question as to the loan and its amount shall have been submitted to the property holders of said town, for which purpose a special election shall be called by the mayor, after giving twenty days notice thereof, and if a majority of the property holders of said town shall vote in favor of any such loan, the same may be negotiated, and not otherwise: *And provided, further*, that the annual interest on the loan of the town shall never exceed one-half of the rev-

HeinOnline -- 1874 162 1874

enue annually derived from the tax levied by said town upon the real estate within the limits of said town.

Sec. 4. To appropriate money and funds from the authorized taxes for the payment of the debt and expenses of the town.

Sec. 5. To make regulations to prevent the introduction of contagious diseases into the town, to make quarantine laws for the purpose, and to enforce the same, within five miles of the town.

Sec. 6. To establish hospitals, in case of epidemic, and to make regulations for the government of the same. To make regulations to keep the streets and premises in and about the town clean and in a healthy condition. To make regulations to keep the streets and side-walks clear of all obstructions, and for the improvement of the same.

Sec. 7. To make regulations to secure the general health and improvement of the town, etc. To declare what shall be nuisance, and to prevent and abate the same.

Sec. 8. To provide the town with water, erect hydrants and pumps, build cisterns and dig wells in the streets for the supply of engines and buckets: *Provided*, that nothing in this section shall be so construed as to deprive private individuals of vested or acquired rights, without just compensation being made therefor by the town government.

Sec. 9. To provide suitable offices for the mayor and town council of the town for the transaction of business.

Sec. 10. To divide the town into wards; alter the boundaries thereof, and create additional wards, as the town may require.

Sec. 11. To establish, support and regulate night and day watches, as herein required.

Sec. 12. To provide for the enclosing, improving and regulating all public grounds belonging to the town, and receiving gift of same for town purposes.

Sec. 13. To, and it shall, license, and license, tax, and regulate auctioneers, merchants, peddlers, retailers, taverns, drinking saloons, hawkers, brokers, pawn-brokers, gambling houses, and all branches of business.

HeinOnline -- 1874 163 1874

Sec. 14. To, and it shall, license, and license, tax, and regulate theatrical and other exhibitions, shows and amusements.

Sec. 15. To, and it shall, restrain and suppress tippling houses, dram shops, gambling houses, dance houses, bawdy houses, and any disorderly house, and the selling of intoxicating or malt liquors, by any person within the town, except by persons duly licensed under the provisions of this act.

Sec. 16. To provide for the prevention and extinguishment of fires; to organize and establish fire companies.

Sec. 17. To regulate the building, and order the repairing and cleaning, of chimneys and flues.

Sec. 18. To regulate the storage of gun powder, tar, pitch and resin, and other combustible material.

Sec. 19. To regulate parapet walls and partitions, fences, and restrain cattle, hogs, horses, dogs, etc., from running at large.

Sec. 20. To provide for taking the enumeration of the inhabitants of said town.

Sec. 21. To regulate the election of town officers, and to provide for removing from office any person holding an office created by ordinance.

Sec. 22. To regulate the fees of jurors and witnesses for services rendered under this act, or any ordinance rendered in pursuance thereof.

Sec. 23. To regulate the watch of the town, to enforce fines, forfeitures and penalties for the breach of any ordinance, and to provide for the receiving and appropriation of such fines and forfeitures, and the enforcement of such penalties; and all money collected under or by authority of any town ordinance, shall be deemed to be taken to belong to said town, and disposed of by the town council under the ordinances of said town, for the general use and benefit of the inhabitants thereof; and all fines and penalties shall be used in the payment of constable and marshal's fees, town improvements, or in liquidation of any town debt.

Sec. 24. The town council shall have power to make all ordinances which shall be necessary and proper for the carry-

HeinOnline -- 1874 164 1874

ing into execution the powers specified in this act, so that ordinances be not repugnant to, nor inconsistent with, the constitution of the United States, nor the organic act of this territory.

Sec. 25. The style of the ordinances shall be, "Be it ordained by the town council of the town of Bozeman."

Sec. 26. All ordinances of the town council shall, within ten days after they have been passed, be published in some newspaper in the town, or posted up in three public places in said town, and shall not be in force until they have been published as aforesaid.

Sec. 27. All ordinances of the town council may be proven by the seal of the corporation, and when printed in book form, or pamphlet form, and purporting to be printed and published by authority of the corporation, the same shall be received in evidence in all courts and places without further proof.

ARTICLE SIX.—*The Mayor.*

Section 1. The mayor shall preside at all meetings of the town council, and in case of a tie shall have the casting vote, and in no other. In case of the non-attendance of the mayor at any meeting, the board of aldermen shall appoint one of their members as chairman, who shall preside at the meeting, but shall not thereby lose his right to vote on any question before the board.

Sec. 2. The mayor or any two aldermen may call a special meeting of the town council.

Sec. 3. The mayor shall at all times be vigilant and active in enforcing the laws and ordinances for the government of the town. He shall inspect the conduct of all the subordinate officers of said town, and cause negligence or passive violation of duty to be prosecuted and punished. He shall from time to time communicate to the aldermen such information, and recommend all such measures, as in his opinion may tend to the improvement of the finances, the health, security, comfort and ornament of the town.

HeinOnline -- 1874 165 1874

Sec. 4. He is hereby authorized to call on every male inhabitant of said town, over the age of eighteen years, to aid in enforcing the laws and ordinances, and in case of riots and fires to call them out as militia and fire companies, to aid him in suppressing the same, or disorderly conduct, preventing and extinguishing fires, for securing the peace and safety of the town, and carrying into effect any law or ordinance, and any person who shall not obey such call shall forfeit to said town a fine not exceeding twenty-five dollars.

Sec. 5. He shall have power, whenever he shall deem it necessary, to require of any officer of said town an exhibit of his books and papers.

Sec. 6. He shall have power to execute all acts that may be required of him by any ordinance made in pursuance of this act.

Sec. 7. He shall also have such power as may be vested in him by ordinance of the town council, in and over all places within five miles of the boundaries of the town, for the purpose of enforcing the health and quarantine ordinances and regulations thereof.

Sec. 8. In case the mayor or any alderman shall at any time be guilty of a palpable omission of duty, or shall wilfully and corruptly be guilty of oppression, malconduct or partiality in the discharge of the duties of his office, he shall be liable to be fined in the probate court of the county, and on conviction he shall be fined not more than five hundred dollars, and the court shall have the power, on the recommendation of the jury, to add to the judgment of the court, that he be removed from office.

ARTICLE SEVEN.—*Of Proceedings in Special Cases.*

Section 1. When all the owners of all the property on a street, lane, avenue or alley, shall petition for such street, lane, avenue or alley to be opened, the town council may open, widen or alter such street, lane, avenue or alley, upon condition to be prescribed by ordinance; but no compensation shall, in such cases, be made to those whose property shall be taken, their tenants or others; nor shall there be any assessment of

HeinOnline -- 1874 166 1874

benefit or damage that accrue thereby to any of the petitioners, the cost of such opening, etc., to be assessed on said owners only.

Sec. 2. The town council shall have power by ordinance to levy and collect a special tax on the holders of lots on any street, lane, avenue or alley, according to their respective fronts, for the purpose of paving, grading or planking side-walks on such street, lane, avenue or alley; *Provided*, said tax shall not exceed the actual cost of said side-walk, etc., respectively, which tax shall be collected in the same manner as other city taxes; *and provided, further*, that nothing in this act shall be construed so as to prevent the owners of such property from making the desired improvement of their own volition.

ARTICLE EIGHT.—*Miscellaneous Provisions.*

Section 1. The town council shall have power, for the purpose of keeping the streets, lanes, avenues and alleys in repair, to require every able-bodied male inhabitant in said town over the age of twenty-one years and under forty-five to labor on the streets, lanes, avenues and alleys, not exceeding two days in each and every year. And every person failing to perform or supply such labor when duly notified by the street commissioner shall forfeit and pay three dollars for each of said days so neglected or refused.

Sec. 2. The members of the town council shall, during their term of service as such, be exempt from serving on juries and in the militia of the territory.

Sec. 3. The town council shall have power to provide for the punishment of offenders by imprisonment in all cases when such offenders shall fail or refuse to pay the fines and forfeitures which may be recovered against them.

Sec. 4. All fines and forfeitures collected for offences committed, or penalties incurred, within the incorporated limits of the town of Bozeman, shall be paid into the treasury of said town by the officer collecting the same.

Sec. 5. The town council shall cause to be published annually a full and complete statement of all moneys received and

HeinOnline -- 1874 167 1874

expended by the corporation the preceding year, and on what account received and expended.

Sec. 6. All suits, actions and prosecutions instituted, commenced or brought by the corporation created, shall be prosecuted in the name of the town of Bozeman.

Sec. 7. Appeals shall be allowed from decisions in all cases arising under the provisions of this act, or any ordinance passed in pursuance thereof, to the probate court; and every such appeal shall be taken in the same manner and with effect as appeals are taken from and granted by justices of the peace under the laws of this territory.

Sec. 8. Whenever the mayor shall absent himself from the town except as herein allowed, or resign, or die, or his office shall otherwise be vacated, the board of aldermen shall immemediately proceed to elect one of (their) number president, who shall be mayor *pro tem*, until the office shall be filled by election as herein provided.

Sec. 9. This act is hereby declared to be a public act, and may be read in evidence in all courts of law and equity within this territory, without proof.

Sec. 10. The town marshall and constable within said town of Bozeman shall be authorized and have power to execute, anywhere within the county wherein said town may be located, all process by the police magistrate of said town or other magistrates within the said town, and the said marshal shall have power to do all the acts that a constable may lawfully do, and shall receive the same fees that are allowed to constables in similar cases, and shall give bonds as constables are required by law to give.

Sec. 11. All actions brought to recover any penalty or forfeiture under this act, or any ordinance, by-law or public regulation made in pursuance thereof, shall be brought in the corporate name, and it shall be lawful to declare generally a debt for such penalty, fine or forfeiture, stating the clause of this act, or the by-law or ordinance under which the penalty or forfeiture is claimed, and to give the special matter in evidence under it.

Sec. 12. In all prosecutions for any violation of any ordinance, by-law, or other regulation, the first process shall be by

HeinOnline -- 1874 168 1874

summons, unless complaint under oath shall be made for a warrant as in other cases.

Sec. 13. Executions may issue immediately upon the rendition of judgment for any fine and costs imposed by virtue of any ordinance or other regulation, and if the defendant have no goods or chattels or real estate within the county whereof the judgment can be collected, the officer rendering such judgment may require the defendant to be confined in jail for a term not exceeding three months, and all persons so committed shall be confined one day for each three dollars of such fine and costs; *and provided, further*, that all persons so confined may be compelled to work upon the streets of said town.

Sec. 14. The police magistrate shall have jurisdiction in all cases of violation of the town ordinances, and shall have the same jurisdiction in all civil and criminal proceedings as is now or shall hereafter be conferred upon other justices of the peace in this territory; and in all courts of this territory said police magistrate shall be held to be a justice of the peace; but no change of venue shall be allowed from said police magistrate to any other justice of the peace for hearing determination in any case where proceeding shall be commenced against any person or persons for the violation of any city ordinances.

Sec. 15. The duties of all officers mentioned in this act not herein prescribed shall be prescribed by ordinance.

Sec. 16. That J. S. Mendenhall, L. S. Willson, Frank Harper, C. L. Clark, John C. Guy, Arch. Graham, William H. Tracy, D. A. Rouse, Nelson Story, Louis Sperling, and H. N. Maguire be and they are hereby constituted and appointed to act as commissioners for the purpose hereinafter mentioned, to serve in such capacity until the board of aldermen of said town shall be elected and duly qualified. Said commissioners, or any three of them, shall, on or before the first Monday in April, A. D. 1874, proceed to lay out the territory embraced within the limits of the said town of Bozeman into three wards, and fix the boundaries of the same, and shall provide also for holding the first election herein appointed in the several wards of said town, shall fix the place for holding said

HeinOnline -- 1874 169 1874

election in each of said wards, shall appoint three persons to act as judges of election in each of said wards, who shall be duly sworn, and whose places may be filled in case they do not serve as provided by law in other elections. Said elections shall be held and returns thereof be made and certified in all respects as may be provided by law in elections for members of the legislature. A copy of said election returns shall be delivered to said commissioners, who shall canvass the same within three days from the time received, and the persons receiving the highest number of votes for the several officers to be elected under this act, shall be declared by said commissioners, or any three of them, duly elected to said offices. If two or more persons shall at said election receive the same number of votes for either of said offices, the said commissioners shall determine the same between them by lot.

Sec 17. Before this act shall become a law it shall be submitted to a vote of the citizens of the town for their approval or disapproval. The commissioners, or any three of them named in section sixteen of article eight of this act, shall give twenty days notice by posting notices in five conspicuous places in said town that an election will be held on a day and at a place named in such notice. They shall appoint three persons to act as judges of election and two clerks, who shall qualify as other judges and clerks of election are required to qualify. They shall prepare a ballot-box and poll-books for receiving and entering such votes. The votes or ballots cast at such election shall have written on them "Town Charter, No," or "Town Charter, Yes." The judges of election shall make an abstract of the votes cast and shall certify the same under oath to the county clerk, and shall, with the assistance of at least one of the county commissioners, open and count said votes, and if a majority of said votes be "Town Charter, Yes," this act shall be in force and operation, and if a majority of the votes be "Town Charter, No," then this act shall be of no validity.

Sec. 18. The polls at the election provided for in the preceding section shall be kept open from ten o'clock A. M. to three o'clock P. M., and no person shall be allowed to vote at

HeinOnline -- 1874 170 1874

such election except such persons as are, under section three of article four of this act, qualified to vote at other town elections herein provided for.

Sec. 19. That if this act shall be approved by the qualified voters of the town, the same may be forfeited at any time, at any general town election that a majority of the qualified voters of the town may vote so to do.

Approved February 13th, 1874.

HeinOnline -- 1874 171 1874

JOINT MEMORIALS.

House Joint Memorial in relation to the Yellowstone national park.

To the Honorable the Senate and House of Representatives of the United States in Congress assembled:

Your memorialists, the Legislative Council and House of Representatives, composing the Legislative Assembly of the Territory of Montana, would respectfully represent that the portions of the public domain which, by the act of congress, approved March 1st, 1872, entitled, "An Act to set apart a certain tract of land lying near the head waters of the Yellowstone river as a public park," is one of the greatest interest to the adventurer, the seeker for the wonderful and curious, and for scientific observers. No like geographical area presents so much to absorb attention, excite curiosity, invite study, and gratify a love of the romantic in nature. Its invigorating breezes and pure waters promote health, and it is destined in a near future to become the resort of travelers from all portions of the civilized world. During the past summer and autumn it was visited by at least five hundred of our people. Its confines are within seventy-five miles of the settlements of Montana, while highways have been constructed by our people along the Yellowstone and Madison rivers, to the northern portions thereof, each leaving an extension of about eighty miles necessary to enable tourists to visit with ease and pleasure all that is there curious or wonderful.

Your memorialists would further represent that with a single exception the entire park is without a permanent occupant interested in preserving intact the facilities of ingress and egress and the curiosities which do there so greatly abound.

Your memorialists do further represent that said park is guarded by immense mountain ranges upon its southern confines, which render it particularly inaccessible from that direction.

HeinOnline -- 1874 172 1874

Your memorialists do further represent that only a small portion thereof is within the limits of the Territory of Montana, as they are defined by the act to provide a temporary government therefor, approved May 26th, 1864, and that for that reason your memorialists can legislate to preserve only a small portion of what is there curious, wonderful and rare.

Your memorialists would further represent that the tourist through that region for a distance of nearly two hundred miles is prevented by the present incomplete provisions of the laws of the United States, from procuring such accommodations as the situation requires, and that authority to construct roads, hotels, baths, trails, observatories, boats, and other necessary and convenient facilities for travelers, should be granted at an early day.

Your memorialists are of the further opinion that the members of the legislative assembly of this territory, by reason of their proximity to and consequent familiarity with this pleasuring ground and their interest in having all that is there found protected from mutilation may be securely trusted to legislate for its preservation.

Your memorialists would therefore most earnestly pray your honorable body, *First*, That an appropriation of one hundred thousand dollars be made by congress, to be expended as you shall direct in the construction of necessary roads and trails therein.

Second, That so much thereof as now lies within the Territory of Wyoming be detached therefrom and be attached to the Territory of Montana.

Third, That such legislation be had by your honorable bodies as will permit at an early day the construction of hotels at the upper and lower geyser basins upon the Madison river, and at the Yellowstone lake, the lower falls of the Yellowstone, and at the White Mountain hot springs on Gardiner's river, and their occupancy by persons who will preserve the curiosities there from mutilation.

And your memorialists, as in duty bound, will ever pray.

Approved January 20th, 1874.

HeinOnline -- 1874 173 1874

House Joint Memorial in relation to irrigation.

To the Honorable the Senate and House of Ropresentatives of the Congress of the United States of America:

Your memorialists, the Legislative Assembly of the Territory of Montana, would most respectfully represent that the portion of the public domain lying between the ninety-ninth meridian of longitude west from Greenwich and the Pacific Ocean is generally incapable of cultivation, except by means of irrigation.

That this arid region embraces more than one-third of the geographical area of the United States, or over one million square miles, and comprises the territories of New Mexico, Arizona, Colorado, Wyoming, Utah, Idaho, and Montana, and the state of Nevada, and large portions of the states of Oregon, California, Nebraska, Kansas, and Texas, and of the territories of Washington and Dakota. That the soils of this vast region are remarkable for their productiveness when subjected to irrigable agriculture.

That the water supply of its rivers and smaller streams is abundant to reclaim millions of acres that now lie waste and unproductive.

That a system of irrigation that will meet the wants of the country will be too extensive and costly for either individuals, private corporations, territorial or state governments to successfully construct.

That the present agriculture of this region is confined to the immediate valleys of the water courses, where irrigating canals are of easy construction and comparatively inexpensive, and it will remain so confined to these narrow limits, unless some extensive system of irrigation can be established.

That for these reasons vast areas of land will remain unsold by the government for years to come, or perhaps forever, unless they can be made available to the agriculturist by irrigation.

That the public domain, outside of this region, subject to the homestead and pre-emption laws, is comparatively exhausted, and the tides of immigration westward, annually

HeinOnline -- 1874 174 1874

increasing in volume, are unable to make available under these beneficent laws the millions of acres of rich lands embraced in this region, by reason of the aridity of the climate and their financial inability to construct adequate irrigating canals.

That no interest is more important to the nation than the development of its mineral resources. Thousands of gold and silver mines are now unworked, for lack of water to drive the machinery to crush the ore. This can be secured only by governmental aid. Reservoirs constructed near the sources of mountain streams will furnish the necessary supply, and the water, after driving the stamp mills at the mines, will flow onward to enrich and fertilize the arid plains we are now seeking to reclaim for cultivation.

That the general government has established ample and numerous precedents for the granting of the relief we now ask, by the donation of lands to various states, to aid in the construction of canals for navigation, and for the building of railways, and by the outright gift of all swamp and overflowed lands to all the western states.

That the aid we ask is an absolute necessity to the states and territories named, and will contribute far more to the general prosperity of the whole nation than any or all of the above classes of donations.

That the control of the water supply and its distribution for irrigation should forever remain in the hands of the people, through their representatives — the legislative assemblies of the several states and territories — and should in no case or degree be surrendered to individuals or corporations.

Therefore, your memorialists would most respectfully pray that a law be enacted by your honorable body, embracing the following general provisions:

First. To grant to the several states and territories named in the preamble to this resolution one-half of all the arid lands, not mineral, within their borders; said lands, or the proceeds thereof, to be devoted to the construction of irrigating canals and reservoirs, for the reclamation of said arid and waste lands.

HeinOnline -- 1874 175 1874

Second. That the construction and maintenance of irrigating canals and reservoirs shall be under the exclusive control and direction of the territory or state, as sole owner thereof, under such laws, rules, and regulations as the legislature thereof shall from time to time provide.

Third. That the territorial and state legislatures shall have power to make all needful rules and regulations, and take all needful steps for the proper construction and maintenance of such canals, and that such power shall include the power to provide by-laws for the issuing of the bonds of the territory or state for the construction of such canals.

Fourth. That the proceeds of said lands, herein granted, shall be kept as an exclusive fund by the territory or state, first, for the payment of the principal and interest of all bonds so issued as aforesaid; second, that any balance remaining after the payment of the bonds issued as aforesaid shall be used in the maintenance of said canals, or the construction of other canals, as the legislature of said territory or state shall from time to time by law direct.

Fifth. That any lands within said territory or state, which shall be filed on, under the provisions of the pre-emption and homestead laws of the United States, after the passage of this act, shall be subject to the operation of this act, if the said lands shall be brought under irrigation by the construction of said canals.

Sixth. That the lands so donated to the several states and territories, herein named, and the remainder of the public domain therein, belonging to the general government, shall be disposed of under revised and more strict pre-emption and homestead laws than are now in force, and that no title shall issue until the claimant shall be a *bona fide* actual settler upon the land claimed.

Approved January 21, 1874.

HeinOnline -- 1874 176 1874

House Joint Memorial in relation to the Public Domain.

To the Senate and House of Representatives of the United States, in Congress assembled:

Your memoralists, the Legislative Council and House of Representatives of the Territory of Montana, represent that no policy of the government has contributed so much to the growth and prosperity of the United States as that policy which has opened the immense public domain to actual settlers, and permitted them, without charge, or for a nominal consideration, to become the owners of such small portions thereof as are convenient and sufficient to make farms and homes.

It has drawn from the crowded Atlantic states an immense population, furnished them a competence, given them a permanent interest in the country, organized new communities, territories and states, become a source of national strength and wealth, and has lured to our country a tide of emigration which, in its increasing strength and volume, we can not too highly esteem.

The legislation by congress on this subject has been liberal, and its influence of unquestioned beneficence. That it was the purpose of your honorable bodies that all the new communities, in an equal degree, should share the privileges and reap the harvest of good which this policy promises, your memoralists are not permitted to doubt; but in the execution of the purpose, thus grand, your memoralists are of the opinion that the design of congress has not been fully carried out so far as it affects the Territory of Montana.

By a treaty made in 1868 with the Crow Indians, substantially all the arable land, and much of the grazing land, within this territory south of the Yellowstone river, was reserved to and set apart for the Crow Indians.

By a recent executive order all the lands north of the Missouri river within this territory have been withdrawn from occupancy and sale, and it is in contemplation, we are informed, to set it apart for the Gros Venties, Blackfeet, Assiniboines, and other tribes inhabiting that region. Between

HeinOnline -- 1874 177 1874

these two rivers a preliminary route for the Northern Pacific Railroad has been surveyed, and nearly one-half of the land, valuable for grains, grasses, or vegetables, has been wholly withdrawn from the market, while the other half has been doubled in price, and the homestead rights have been reduced to eighty acres; this has been done before there has been any permanent location of the line of the road, and as a result, the people of this territory, in this form, are made to feel seriously the burden of the railroad legislation long before they feel any of its beneficent effects. That any legislation compels or *justifies* this withdrawal of lands so long in advance of its construction, or at least its permanent location, your memorialists are not prepared to affirm.

Your memorialists are of the opinion that the area of the public domain within this territory thus affected by Indian treaties or by railroad legislation is nearly one hundred thousand square miles. Its influence upon the material prosperity of our territory is of incalculable mischief. The contemplated change of the Crow reservation to the basin of the Judith river, is a partial relief, but it is, avowedly, to secure some of the best land along the Yellowstone river from the Indians, and subject it to the legislation pertaining to the railroad and its land-grant, that this change is made.

Your memoralists are of the opinion that the reservations which by treaty have been secured to Indian tribes heretofore, have been unnecessarily large.

Your memorialists are of the further opinion that while the construction of the three trans-continental railroads is of such national importance and concern as to justify the aid which the government proffered, the public welfare would be greatly promoted if, in exchange for the public land offered to the Northern Pacific railroad, aid was granted to said road in some other form. Such an exchange would possibly facilitate the completion of that great enterprise, could be compelled upon any application by that corporation for an extension of its charter, and would greatly relieve our people from the evils which they now suffer.

Your memorialists regard that conclusion which adjudges the gift of immense and valuable grants of the public domain

HeinOnline -- 1874 178 1874

to the great national enterprise, as preferable to encouragement by way of direct gifts of money or national credit, as the result of a short-sighted view.

A half century hence the government will have received directly more than any aid it need to render, while indirectly it will have received compensation one hundred fold; but a half century hence the immense grants of lands will probably become elements of discord and sources of disturbance to the various states then containing them, nor is it impossible that they will then affect deleteriously the nation at large.

Your memorialists would further represent that, by direction of the commissioner of the general land office, all public lands in this territory, surveyed and open to occupancy, settlement and sale, are declared to be *prima facie* mineral lands, and before they can be secured to the pre-emptor it is made his duty to cause public notice to be given, that on some day named a hearing will be had, as to the mineral or non-mineral character of such lands, and to attend with witnesses to establish that his location is non-mineral.

Your memorialists are not advised, nor do they believe, that any of the public domain within this territory, more valuable for its deposits than for agriculture, has ever been, or sought to be, entered as agricultural lands. The price charged for agricultural lands, within the limit of the railroad land grant, where the public lands are in greatest demand, is the same as that charged for placer mining ground. Your memorialists represent that the necessity thus imposed upon those desiring to secure agricultural lands requiring the publication of notices and the transportation of witnesses, often long distances, to establish a proposition patent to the most common observation, and only necessary by reason of the order aforesaid, is a grievous burden to the people of this territory, and has already operated to increase the expense of securing homesteads and pre-emptions within this territory and land district many thousand dollars, and that no right of the general government would be imperiled if such order and direction were cancelled.

Your memorialists would not wish to make any unseemly complaint of the method by which the beneficent design of

HeinOnline -- 1874 179 1874

the general government is sought to be carried out, but an aggregation of obstacles to our settlers has seriously impaired the usefulness of the policy of the government, and interfered with the occupancy, settlement and sale of agricultural lands, within this land district.

In the belief that every interest of the general government conspires with those of our own territory, in requiring that every facility should be afforded to the actual settler to acquire, without unnecessary expense, the rights granted him by law, we present this, our memorial.

Your memorialists therefore pray:

First. That in all pending and future negotiations of treaties with the Indian tribes, the area of their reservations be narrowed to the smallest convenient limit, and that existing treaties be supplemented by articles which will reduce the size of existing reservations.

Second. That such legislation be had by your honorable bodies as will result in the relinquishment by the Northern Pacific Railroad, for an adequate consideration, of its immense and valuable land grant within this territory, and that, meanwhile,

Third. Such legislation be had as will result in leaving open for settlement and occupancy the public lands in Montana, upon the same terms and with like facilities as such lands are subject to elsewhere, until the relinquishment of the claim of said corporation thereto, as herein prayed, or until the permanent location and construction of said road.

Fourth. That congress cause such legislation to be had as will result in rescinding the order which it is made necessary to establish the non-mineral (character) of all agricultural lands it this land district before procuring title thereto, and that the determination of the surveyor general, until a contest, be taken as a guide in the land office in determining as to the character of the lands in regard to the mineral or non-mineral character thereof.

And your memorialists, as in duty bound, will ever pray.

Approved February 13, 1874.

HeinOnline -- 1874 180 1874

Council Joint Memorial in relation to lands in the Bitter Root Valley.

To the Honorable the Senate and House of Representatives of the United States, in Congress assembled:

Your memorialists, the Legislative Council and House of Representatives composing the legislative assembly of the Territory of Montana, would respectfully represent: That in pursuance of an act of congress entitled "An Act to provide for the removal of the Flathead and other Indians from the Bitter Root Valley, in the Territory of Montana," approved June 5th, 1872, the surveyor general of Montana has caused to be surveyed about ten thousand four hundred acres of land in the said Bitter Root Valley, for the benefit of the said Indians, not one of whom has abandoned his tribal relations with his tribe, but all have, since the first day of August, 1872, been treating with the government and receiving their annuities therefrom.

Your memorialists would further represent that the delays which have occurred in adjusting the rights of the Indians to said lands have nearly exhausted the time which was given settlers for proof and payment for their claims, and that such delay has occurred through no fault of the said settlers, and they should not be made the sufferers.

Your memorialists would further represent, that these settlers are far removed from market, and that in consequence of the late panic and stringency in monetary affairs, it is difficult for them to obtain the necessary money to pay for their lands within the period specified in said act.

Your memorialists would therefore respectfully ask your honorable body to enact a law extending the time to make proof and payment for said claims for the term of two years, and for such further legislation as will relieve the people of the Bitter Root Valley from the present embarrassing condition.

And your memorialists will ever humbly pray, etc.

Approved January 20th, 1874.

HeinOnline -- 1874 181 1874

Council Joint Memorial in relation to the protection of the Yellowstone Valley, and of communication with the town of Bismarck, in Dakota.

To the Honorable the Senate and House of Representatives of the United States, in Congress assembled:

Your memorialists, the Legislative Council and House of Representatives, composing the legislative assembly of the territory of Montana, would respectfully represent: That the settlements of the said territory are isolated from the other inhabited and civilized portions of the national domain, with which they can only communicate for purposes of travel and transportation (except for a short season each year) by means of the stage coach and freight wagon.

Ever since the closing of the Bozeman and Bridger roads, reaching from the head waters of the North Platte to those of the Missouri, and the abandonment of Forts Reno and C. F. Smith, our route of communication with the states east of us has been for the most part by way of the settlement of the territory of Utah, the circuity of which adds greatly to the expense, tediousness and delay of our intercourse with the east.

Your memorialists anticipate, within a very few years, the completion of the Northern Pacific Railroad through the Yellowstone Valley to the now eastern limit of our settlements, and the military expedition under Lieutenant-Colonel E. D. Baker, along the line of the Northern Pacific Railroad from Fort Ellis eastward, and the more recent expedition of General Stanley, from Bismarck westward, have defined a line of communication with the now completed portion of said railroad, shorter by many hundred miles than the said route by way of Utah, heretofore pursued, affording a direct outlet to market for our herds of cattle and other products, for want of which our said products have hitherto been of little value. Traversing a country of abundant pasturage, of surpassing fertility, well watered and supplied with timber, and in all respects more inviting to the herdsman, the agriculturist, and miner, than any portion of Montana now settled.

The allurements of the mineral wealth of the mountains fringing that great valley, and the agricultural facilities afore-

HeinOnline -- 1874 182 1874

said, impel our pioneers and adventurers in that region, notwithstanding the implacable hostility of the savage hordes by which it is infested.

The exigencies of trade will in the ensuing summer cause numerous and doubtless successful attempts to navigate the Yellowstone river, determining the feasibility of transportation by means of steamboats upon the stream.

That great national enterprise, the construction of the Northern Pacific railroad, must of necessity push its way westward with all possible rapidity, both by reason of the terms of its charter and the wants of the nation.

The necessity of a large body of troops to enable the engineers of the said railroad to locate their lines in this region demonstrates to your memorialists that to ensure the safety of our citizens and to guard and protect the objects and interests above alluded to, the immediate presence of a large and well-appointed armed force along the said line of communication between Fort Ellis, in Montana, and the town of Bismarck, in Dakota, is necessary.

Wherefore your memorialists pray that such action may be taken as in your wisdom you may deem expedient, to the protection of the objects and interests aforesaid.

And your petitioners will ever pray, etc.

Approved February 7th, 1874.

House Joint Memorial in relation to opening lands in Bitter Root Valley to settlement.

To the Honorable the Senate and House of Representatives of the United States, in Congress assembled:

Your memorialists, the Council and House of Representatives, comprising the legislative assembly of the territory of Montana, most respectfully represent: That the lands in Bitter Root Valley, lying above the Lo-Lo fork of the Bitter Root river, which have been recently thrown open to settlement by an act of congress, approved June 5th,

HeinOnline -- 1874 183 1874

1872, were and still are withheld from settlement under the pre-emption and homestead laws of the United States. That the said lands are rich and fertile agricultural lands. That there (are) now families in the territory, and many coming into the territory from time to time, who desire to settle upon said lands, but who are debarred from so settling thereon from the fact that they cannot homestead or pre-empt, and are unable to pay for said lands within the short time that the law now requires payment to be made. That the families and parties to whom it was designed by the homestead and pre-emption laws to give homes and homesteads of their own, are thus denied the privilege of settling upon these fine lands, and the policy of the government to reserve its public domain from the hands of the speculators, for homes for the poor and needy, is, as to these lands, defeated.

Your memorialists most respectfully call the attention of your honorable bodies to these facts, and humbly ask that you open the said lands to settlement, under the pre-emption and homestead laws of the United States.

And your memorialists will ever pray.

Approved February 12, 1874.

Council Joint Memorial in relation to the protection of citizens of Deer Lodge and Missoula counties

To the Honorable the Senate and House of Representatives of the United States, in Congress assembled:

Your memorialists, the Legislative Council and House of Representatives, composing the legislative assembly of the territory of Montana, would respectfully represent that the citizens of said territory residing in counties of Deer Lodge and Missoula live in jeopardy from the bands of roving Indians infesting and traversing that country.

Your memorialists would further represent, that the Flat-head Indians (of the Bitter Root Valley) have for a long time claimed that region, and while the same has, to a great ex-

HeinOnline -- 1874 184 1874

tent, been occupied by white settlers engaged in the various pursuits of agriculture and the mechanical trades, the said Indians persist in their determination to inhabit and control the said country, notwithstanding the said country has been surveyed by surveyers of the United States, and, to a great extent, duly pre-empted by white settlers. The said Indians declare that they will not leave the land unless forcibly removed.

Your memorialists would further represent, that by reason of the topography of the country, numerous tribes of Indians in their travels to and from their buffalo grounds, must necessarily pass through the canion of Hell Gate (river) Valley in said counties, among which may be enumerated the Nez Perces, Cayuses, Coeur D'Alenes, Kliklitats, Yokimas, Walla Wallas, Spokanes Colville, Peud D'Oreilles, Kootenays, Kettle Indians, and also stragglers from the Modoc tribe, many of whom are regardless of the rights of white settlers, frequently plundering their property, driving off their horses, killing and stealing their cattle, — wherefore frequent collisions of the said tribes with the settlers are the consequence, and the country is in danger of an Indian war at any time.

Your memoralists would further represent, that the clandestine sale of spirituous liquors to the said Indians by lawless white persons and half-breeds, arousing all their bad passions, is an additional source of alarm to the settlers who are defenceless, except as their own unorganized means and strength can furnish.

Wherefore, your memorialists would pray that a military post consisting of at least five hundred cavalry soldiers be established at or near the Hell Gate Randi, at the confluence of the Bitter Root and Hell Gate rivers, and to take such other measures as may insure the safety of the citizens of the counties aforesaid.

And your petitioners will ever pray.

Approved February 5th, 1874.

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House Joint Memorial in relation to the improvement of the Yellowstone river, for the purpose of navigation.

To the Honorable the Senate and House of Representatives of the United States in Congress assembled:

Your memorialists, the Council and House of Representatives composing the legislative assembly of the territory of Montana, most respectfully represent:

That the want of railroad and river transportation subjects the people of the territory of Montana to many grievous burdens and disadvantages. That Corinne, the nearest point from which goods and freight can be shipped into the territory of Montana by rail, is about five hundred miles from its principal towns. That there remains but one other way by which freight can be brought into the territory, which is by shipping up the Missouri river, and that the season for shipping by this route is short, besides the great distance to be traveled and time required, render this mode of transportation expensive and inconvenient.

Your memorialists would most respectfully represent, that it has been recently ascertained that the Yellowstone river can be easily cleared out and rendered navigable. That by this river goods now shipped by the Missouri river can be shipped directly into the territory of Montana in much less time and by a route that is three hundred miles shorter than by the Missouri. That the main channel of the Yellowstone is unchangeable and far better for navigation, and owing to the slow fall of the water, this river can be navigated much longer during the season than the Missouri.

Reminding your honorable bodies of these facts and of the additional fact that during the winter transportation by wagon from Corinne, owing to the snow, is uncertain, unsafe, and oppressive, your memorialists would respectfully, but most earnestly, urge upon you the propriety of making an appropriation to clear out the channel of the Yellowstone, and render the same navigable.

In detailing to you the burdensome disadvantages of our people, and telling you that this will give them comparatively quick and cheap transportation, we point you to the great

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good such a step on your part will accomplish, and humbly ask for the appropriation of one hundred thousand dollars to be used for such purpose, in such manner as your honorable bodies shall think wise and prudent.

And your memorialists will ever pray.

Approved February 13th, 1874.

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JOINT RESOLUTIONS.

Council Joint Resolution.

Resolved, by the Council and House of Representatives of the Territory of Montana:

That all bills introduced in either branch of the legislative assembly, amending or affecting the civil practice act or criminal practice act of the codified statutes of Montana territory, be referred to a joint judiciary committee, consisting of the judiciary committees of both houses.

Approved January 21st, 1874.

Council Joint Resolution in relation to the correction and distribution of the laws.

Resolved, by the Council, the House concurring:

That after said laws are printed, the secretary of the territory shall furnish, and he is hereby authorized so to do, each member of the Council and House of Representatives of the Legislative Assembly, and the chief clerk of each house, and each county, district, and territorial officer with two copies of the laws passed at the eighth session of the legislative assembly, and two copies each of the journals of each house; also, each employe of the legislative assembly, one copy of the laws and journals of each house: *Provided*, That nothing herein contained shall be so construed as to make the Territory of Montana responsible for the printing of said laws and journals.

Approved February 13th, 1874.

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House Concurrent Resolution in relation to the Centennial Exhibition.

Resolved, by the House of Representatives, the Council concurring:

That the sum of five thousand dollars, or so much thereof as may be necessary, be and the same is hereby appropriated out of any moneys in the territorial treasury, not otherwise appropriated, to defray the expense of packing and transporting such articles as in the judgment of the persons hereafter named are appropriate and worthy to be exhibited at the International Exhibition, to be held in the city of Philadelphia, in 1876, and to defray the expenses of arranging such department as may be assigned to the territory of Montana, at said exhibition by the managers thereof, and that the territorial auditor be and he is hereby authorized to draw his warrants on the territorial treasurer in favor of William H. Claggett, Patrick A. Largey, and Emma Bowen, or any one of them upon the order of two of them, at such time or times as they may request, and in such sum or sums as they may desire, so that in the aggregate the foregoing sum is not exceeded and the parties aforesaid occupying relations of trust in various capacities to said exposition and the connection of this territory therewith, this resolution shall be interpreted and held to ensure to the successors of the parties aforesaid, in said trust, or any of them for the uses and purposes aforesaid.

Approved February 13th, 1874.

House Concurrent Resolution in relation to the Historical Society of Montana.

Be it Resolved by the House of Representatives, the Council concurring:

That the sum of five hundred dollars be and the same is hereby appropriated to the Historical Society of Montana, out of any moneys in the territorial treasury not otherwise appropriated, and the territorial auditor is hereby authorized to draw his warrant on the treasurer therefor, and he may take such security for the faithful application thereof to the purpose for which said society was incorporated as in his judgment is proper to be given by said society.

Approved February 10th, 1874.

HeinOnline -- 1874 189 1874

Council Concurrent Resolution to pay for *Daily Herald.*

Resolved by the Council, the House of Representatives concurring:

That there be and is hereby appropriated out of the territorial treasury, from any moneys not otherwise appropriated, to Fisk Brothers, the sum of forty-one dollars and twenty-eight cents, for eight copies of *Daily Herald* furnished the council, and two copies of the same paper furnished the house of representatives, during the eighth session of the legislative assembly of Montana territory, and the territorial auditor is hereby directed to draw his warrant on the territorial treasurer for said amount.

Approved February 13th, 1874.

Council Concurrent Resolution to pay J. M. Knight for services rendered.

Resolved by the Council, the House of Representatives concurring:

That there be and is hereby appropriated out of the territorial treasury, from any moneys not otherwise appropriated, to J. M. Knight, for services in examining the auditor's and treasurer's books, under the instruction of the eighth legislative assembly of Montana, the sum of seventy-two dollars, and the territorial auditor is hereby directed to draw his warrant on the treasurer for said amount.

Approved February 13th, 1874.

Council Joint Resolution in relation to the publication of the report of directors and warden of the Montana penitentiary.

Resolved, by the Council and House of Representatives of the Territory of Montana:

That there be and is hereby appropriated out of the territorial treasury, from any money not otherwise appropriated, the sum of two hundred and eighteen dollars to James H. Mills, for publishing in pamphlet form eight hundred copies of the "Act to regulate and govern the annual report of the

HeinOnline -- 1874 190 1874

directors and warden of the Montana penitentiary," and the territorial auditor is hereby authorized to draw his warrant on the territorial treasurer for said amount.

Approved February 11, 1874.

Council Joint Resolution to pay for repairing the arsenal.

Resolved, by the Council and House of Representatives of Montana Territory:

That the auditor is hereby directed to draw a warrant on the territorial treasurer for the sum of four hundred and twenty-eight dollars and fifty-seven cents, in favor of William Thompson, said sum being for amount of certificate of auditor, drawn December 9th, 1872, for four hundred and twenty-eight dollars and fifty-seven cents, for weather-boarding and roofing the territorial arsenal: *And be it further resolved*, That the auditor is hereby directed to draw a warrant on the territorial treasurer for the sum of twenty-one dollars and forty-three cents, in favor of E. H. Bartlett & Co., said sum being for amount of certificate of auditor, drawn November 12th, 1872, for twenty-one dollars and forty-three cents, being for repairing the doors of the territorial arsenal.

Approved February 3, 1874.

House Joint Resolution in relation to printing.

Resolved, by the House, the Council concurring:

That there be and is hereby appropriated, out of any money in the territorial treasury not otherwise appropriated, to Geo. F. Cope, the sum of two hundred and fifty dollars, for printing two hundred and twenty-five copies of a pamphlet, entitled "Marks and Brands in the Territory of Montana," and the territorial auditor is hereby authorized to draw his warrant on the territorial treasurer therefor.

Approved February 12, 1874.

HeinOnline -- 1874 191 1874

Council Concurrent Resolution in relation to printing.

Resolved, by the Legislative Council of the Territory of Montana, the House concurring:

That the sum of nine hundred and four dollars be and is hereby appropriated out of the territorial treasury to Thomas Deyarmon for newspapers furnished, and for printing for Council and House. The territorial auditor is hereby authorized to draw his warrant on the treasurer for said amount.

Approved February 12th, 1874.

House Joint Resolution to compensate L. M. Todd for transporting ammunition from Helena to the arsenal at Virginia City.

Resolved, by the Council and House of Representatives of the Territory of Montana:

That the auditor is hereby authorized and directed to issue a warrant on the territorial treasurer, in favor of L. M. Todd, for the sum of one hundred and thirty-five dollars ($135), for transporting nine thousand pounds of ammunition from Helena to the arsenal at Virginia City.

Approved January 17, 1874.

Council Concurrent Resolution in relation to printing.

Resolved, by the Legislative Council of the Territory of Montana, the House concurring:

That the sum of three hundred and eighty-three dollars be and is hereby appropriated, out of any moneys not otherwise appropriated in the treasury, to George F. Cope, for newspapers furnished, and for printing for the Legislative Assembly of the territory of Montana, and the territorial auditor is hereby authorized to draw his warrant on the territorial treasurer for said amount.

Approved February 12, 1874.

HeinOnline -- 1874 192 1874

INDEX

TO THE

CONSTITUTION OF THE UNITED STATES AND THE AMENDMENTS THERETO.

Constitution, 1–13.
Amendments, 14–18.
Adjournment of Congress, 4.

APPORTIONMENT. See *Congress.*

ARMY and navy.
President commander-in-chief of, 9.

ARMS.
Right of peple to bear, 14.

ARREST.
Members of Congress privileged from, 4.

BAIL.
Excessive, not to be required, 15.

BILLS.
How become laws, 4.
When become law without president's approval, 4, 5.
Of attainder — none shall be passed, 6.
Of credit—no state shall emit, 6.
For raising revenue—shall originate in House of Representatives, 4.

CITIZENS of the United States.
Who are, 17.
Of states, 17.
Privileges of, 11, 17.
Rights of, 17.

CONGRESS.
Legislative powers vested in, 1.
What consists of, 1.
Apportionment of Representatives, 1.
To meet annually, 3.

CONGRESS — *Continued.*
Adjournment of, 4.
Powers of, defined and enumerated, 5.
To make rules and regulations respecting territory and other United States property, 12.
Members of, privileged from arrest, 4.
Members of, disqualified from holding office, 4.
Veto power over acts of, 4.
To make laws to carry out provisions of the constitution, 6.
Votes for president and vice-president opened and counted in presence of, 16.
Each house may adopt its own rules, etc., 4.

CONSTITUTION of the United States.
Preamble to, 1.
Amendments to, 14.
Amendments to, how made, 12.
Laws made in pursuance of, supreme, 13.
Patification of, 13.
Powers not delegated in, reserved, 16.

COURTS of the United States.
Judges of, hold office during good behavior, 10.
Jurisdiction of, 10.

ELECTORS.
Presidential, how elected, 8.

HeinOnline -- 1874 193 1874

ELECTORS — *Continued.*
Time of choosing, prescribed by Congress, 8.

ELECTIONS.
For president and vice-president, 8, 16, 17.
For senators and representatives, 3.
Times and places of holding, 3.
How prescribed, 3.
Each house of Congress judges of, 3.

EXECUTIVE. See *President.*

EX POST FACTO laws.
None shall be passed, 6.

FUGITIVES.
From justice delivered up, when, 11.
From service or labor, 11.

GRAND jury.
Accused to be presented by, exceptions, 15.

HABEAS CORPUS.
Shall not be suspended — exceptions, 6.

HOUSE of Representatives of the United States.
How composed, 1.
Apportionment of members of, 1.
Vacancies in, how filled, 3.
Judges of qualifications of its members, 4.
To choose its officers, 3.
To keep a journal of its proceedings, 4.
May determine its rules, etc., 4.
Revenue bills to originate in, 4.
Who may be members of, 1.
Have sole power of impeachment, 3.
Compensation of members, 4.
Adjournment of, 4.
When may elect president, 16.

IMPEACHMENTS.
Senate sole power to try, 3.
Concurrence of two-thirds necessary to convict, 3.
How far judgment in shall extend, 3.

JUDICIAL power.
How vested, 10.
To what shall extend, 10.
All crimes, except in cases of impeachment, tried by jury, 10.
Judicial power construed, 16.

JURY.
Right of trial by, 11, 16.

JUDGMENTS.
In cases of impeachment, 3.

JURISDICTION. See *Courts.*

LAWS.
No ex-post facto to be passed, 6.
In pursuance of constitution, supreme, 13.

MONEY. See *Treasurer.*

NAVY. See *Army and Navy.*

NOBILITY.
No title of, to be granted, 6.

PRESIDENT of the United States.
Term of office of, 7.
How elected, 7, 16, 17.
Qualifications of, 8.
May be impeached, 10.
When tried chief justice to preside, 3.
Oath of office, 6.
Commander-in-chief of army and navy, 9
Duties and powers of, 9.
May be removed on impeachment, 10.
Shall commission all officers, 10.
Bills to be presented to, for approval, 4.
Veto power of, 4.
Compensation of, 9.

PRESENTS.
No officer of the United States to accept, from foreign powers, 6.

PRIVILEGES.
Of members of Congress, 4.
Of citizens of the United States, 11, 17.

POWERS.
Not delegated reserved, 16.

REPRESENTATIVES. See *Congress, House of Representatives.*

REVENUE.
Bills for, where to originate, 4.
Senate may propose amendments to, 4.

RELIGION.
Congress shall make no law establishing, 14.

SENATE of the United States.
Sole power to try impeachments, 3.
How composed, 3.
Shall be judge of its members, 4.
Who may be members of, 3.
Vacancies in, how filled, 3.
Trials of impeachment by, 3.
To keep a journal of its proceedings, 4.

HeinOnline -- 1874 194 1874

SENATE — *Continued*,
To determine rules of its proceedings, 4.

SENATORS of the United States.
Who may be a senator, 3.
How chosen, 3.
Term of office, 3.
Classification of, 3.
Compensation of, 4.
Disqualified during term from holding office, 4.

SLAVERY.
Abolished in the United States, 17.

STATE.
Not to make treaty of alliance, 7.
Not to lay imposts or duties, 7.
Not to grant letters of marque, 7.
Not to coin money or emit bills of credit, 7.
Not to impair obligation of contracts, 7.
Not to lay duty of tonnage, 7.
Not to keep troops or ships of war, 7.
New states, how admitted, 12.
Powers not delegated reserved, 16.
No new state erected out of old without consent, etc., 12.

SOLDIER.
In time of peace not quartered in any house without consent of owner, 14.
In time of war, as prescribed by law, 14.

SEARCH and Seizure.
Right of people against, 14.

TRIAL by Jury.
Right of, 11.

TRIAL
Accused's right to speedy trial, 15.

TREASURY.
Money to be drawn only in pursuance of law, 6.

TREASON against the United States.
What deemed, 11.
Effect of conviction for, 11.

UNITED States of America. See *Constitution*.

VACANCIES.
In representation of any state—how filled, 3.

VICE-PRESIDENT of the United States.
General duties and powers of, 3.

HeinOnline -- 1874 195 1874

INDEX

TO THE

ORGANIC ACT OF MONTANA TERRITORY AND THE ACTS AMENDATORY THERETO.

Organic act, p. 15.
Amendatory organic act, p. 24.
Amendment of January 23d, 1873, p. 34.

APPEALS.
From supreme court, 24, § 9.
From district courts, 24, § 9.
From probate courts, 31, § 2.

APPORTIONMENT. See *Legislative Assembly.*
How made, 32, § 5.

ASSOCIATE justices.
How appointed, 26, § 11.
Oath of office, 26, § 11.
Term of office, 24, § 9.
Salary of, 26, § 11.
Salary of, increased, 32, § 3.
See *Supreme Court.*

ATTORNEY, United States.
Term of office, 26, § 10.
How appointed, 26, § 11.
Duties of, 26, § 10.
Fees and salary of, 26, § 10.
To take oath of office, 26, § 11.

BILLS.
Passing legislature presented to governor, 23, § 6.
When become law without governor's approval, 23, § 6.

BOUNDARY
Of Montana, 19, 20, § 1.

CAPITAL of territory.
How located, 28, § 12.
How changed, 28, § 12.

CHIEF justice.
How appointed, 26, § 11.
Oath of office, 26, § 11.
Term of office, 24, § 9.
Salary of, 26, § 11.
Salary of, increased, 32, § 3.
See *Supreme Court.*

CLERKS.
Of supreme court—how appointed, 24, § 9.
Duties and powers of, 24, § 9.
Fees of, 24, § 9.
Tenure of office, 24, § 9.
Of district courts—how appointed, 24, § 9.
Tenure of office, 21, § 9.
Fees of, 24, § 9.

CONGRESS. See *Delegate to Congress.*

COUNCIL.
Number of members, 21, § 4.
Qualifications for, 21, § 4.
How elected, 21, § 4.
Vacancies—how filled, 21, § 24.
Compensation of, 26, § 11.
To choose its own officers, 26, § 11.
See *Legislative Assembly*, 21, § 4.

COURTS.
See *Supreme Court.*
See *District Court.*
See *Probate Court.*
See *Justices of the Peace.*

DELEGATE to Congress.
How elected, 29, § 13.
Qualifications for, 29, § 13.
Term of office of, 29, § 13.
Rights and privileges of, 29, § 13.

HeinOnline -- 1874 196 1874

DISTRICT courts.
By whom held, 24, § 9.
Jurisdiction of, 24, § 9.
Appeals and writs of error from, 24, § 9.
Times and places of holding, 32, § 4.
Judges of, how assigned, 32, § 4.
Judges of, where to reside, 24, § 9.

EXCEPTIONS. See *Appeals.*

EXECUTIVE. See *Governor.*

ELECTIONS. See *Voters*
To be held as prescribed by law, 21, § 4.
For delegates to congress, 29, § 13.

FEES. See *Clerks.*

GOVERNOR.
Term of office, 20, § 2.
How appointed, 26, § 11.
Duties and powers of, 20, § 2.
When secretary of territory to act as, 21, § 3.
Where shall reside, 20, § 2.
Legislative power of, 21, § 4,
Veto power of, 23, § 6.
To appoint certain officers, 24, § 7.
Oath of office of, 26, § 11.
Salary of, 26, § 11.
When bills become law without signature of, 23, § 6.
When may call sessions of legislature, 26, § 11.
Salary under amended law, 34, § 3.
See *Legislative Assembly.*

HOUSE of representatives.
Number of members of, 21, § 4.
How elected, 21, § 4.
Qualifications of, 11, § 4.
Vacancies in, how filled, 21, § 4.
To choose its own officers, 26, § 11.
Members, where to reside, 26, § 4.
Compensation of members of, 26, § 11.
Compensation of members under amended law, 34, § 2.
See *Legislative Assembly.*

JUDICIAL districts.
Territory divided into, 24, § 9.
Defined by supreme court, 32, § 4.

JUDICIAL power.
In what courts vested, 24 § 9.

JUDGES of supreme court. See *Chief Justice* and *Associate Justices.*

JURISDICTION.
Of supreme court, 24, § 9.
Of district courts, 24, § 9.
Of probate courts, 24, § 9.
Of justices' courts, 24, § 9.

JUSTICES of the peace.
Jurisdiction of, limited by law, 24, § 9.

LANDS.
What appropriated for schools, 29, § 14.

LEGISLATIVE assembly.
Powers vested in, 21, § 4.
Subjects of legislation, 23, § 6.
Of whom consists, 21, § 4.
Number of members of, 21, § 4.
Compensation of, 26, § 11.
Compensation of under amended law, 34, § 2.
Apportionment for, 22, § 4.
Officers of, 26, § 11.
Officers of under amended law, 34, § 2.
Compensation of officers of, 26, § 11.
Compensation of officers under amended law, 34, § 2.
Sessions, when held, 26, § 8.
Sessions limited, 34, § 2.
Not to grant private charters, 31, § 1.
May pass general incorporation acts, 31, § 1.
Functions of, revived, 32, § 5.
Members of, not to hold office when, 34, § 8.
See *Governor.*

MARSHAL, United States.
How appointed, 26, § 10.
Term of office, 26, § 10.
Fees and salary of, 26, § 10.
Duties of, 26 § 10.

OFFICERS.
What to be elected, 24, § 7.
What to be appointed, 24, § 7.
Appointments, how made, 24, § 7.
To take oath of office, 26, § 11.
Of legislative assembly 26, § 11.
Of legislature under amended law, 34, § 2.
Disbursing, to give bond, 30, § 16.
Of township, 24, § 7.
Of district, 24, § 7.
Of county, 24, § 7.

PROBATE courts.
Jurisdiction of, limited by law, 24, § 9.
Jurisdiction of, defined, 31, § 2.

HeinOnline -- 1874 197 1874

PROBATE courts — *Continued.*
Denied chancery powers, 31, § 2.
Appeals from, 31, § 2.

SEAT of government. See *Capital.*

SCHOOLS.
Lands appropriated for, 29, § 14.

SECRETARY.
How appointed, 26, § 11.
Term of office, 21, § 3.
Duties and powers, 21, § 3.
When to act as governor, 21, § 3.
Oath of office, 26, § 11.
To record certificates of oaths of certain officers, 26, § 11.
Salary of, 26, § 11.
Salary of under amended law, 34, § 3.
Duties as disbursing officer, 26, § 11.
To give bond, 30, § 16.

SLAVERY.
Prohibited, 23, § 6.

SOIL.
Primary disposal of, 24, § 9.

SUPREME court.
Of what shall consist, 24, § 9.
Terms of, 24, § 9.
When held, 24, § 9.
Shall appoint its clerk, 24, § 9.
Appeals from, 24, § 9.

SURVEYOR general.
How appointed, 26, § 10.
Office, where located, 26, § 10.
Duties and powers of, 26, § 10.
Compensation of, 26, § 10.

TAXES.
United States property exempt, 23, § 6.
Non-residents not more than residents, 23, § 6.

VOTERS.
Qualifications of, 23, § 5.

WRITS of error. See *Appeals.*

AMENDMENT OF JANUARY 23, 1873.

ACT fixing compensation of members and officers of legislative assembly and of governor and secretary, 34, §§ 1-4.
Sessions of legislature limited, 34, § 1.
Compensation of members and officers, 34, § 2.
Salaries of governor and secretary, 34, § 3.
Limitations of act, 34, § 4.

HeinOnline -- 1874 198 1874

GENERAL INDEX.

A

ABATEMENT.
Plea of, in attachment, 47, § 139.

ACCOUNT.
Of person claiming lien, 84, §§ 1, 2.
When county treasurer to render, 100, § 1.
Of costs, to be itemized, 52, § 11.

ACCOUNTS.
For claim, to county commissioners, 63, § 1.
Appeal, in case same disallowed, 63, § 2.

ACTION.
Against putative father of bastard, 41, §§ 1, 2.
How commenced in attachment, 47, § 139.
By road supervisor for delinquent taxes, 114, § 27.

ACTS AMENDED.
Act to appropriate moneys out of sinking [fund] for penitentiary, 29, §§ 1-3.
Act defining duties of territorial auditor, 79, §§ 1-3.
"Civil Practice Act," 46-59.
"Criminal Practice Act," 59, 60.
Concerning "County Commissioners," 63, 64.
Concerning "Costs, Fees," 65, 66.
Act relating to "Counties and County Boundaries," 66, §§ 1-3.
Act relating to "County Orders," 68, §§ 1, 2.
Act relating to "Counties and County Officers," 69, §§ 1, 2.
Act relating to "County Officers — Revenue," 70, §§ 1-3.
Act relating to "County Poor," 71, §§ 1-5.
Relating to "Elections," 76-78.
In relation to "Fees," 79.

ACTS AMENDED—*Continued.*
Act in relation to "Licenses," 83, §§ 1, 2.
Act concerning "Liens," 84, §§ 1.
Relating to "Mines, Right of Way," 94, §§ 1-3.
Act relating to "Penitentiary," 95, §§ 1-4.
Act relating to "Probate Clerks," 98 §§ 1-3.
In relation to "Revenue," 100-102.
Act authorizing commissioners of Missoula county to levy special tax, 155.
Act to incorporate City of Virginia, 157.

ADMINISTRATORS AND EXECUTORS.
Act to provide for speedy settlement of small estates, 35, §§ 1, 6.
Time of settlement, 35, § 1.
Manner of settlement, 35, § 2.
Final settlements, 36, § 3.
Extension of time for final settlements, 36, § 4.

AFFIDAVIT.
Of witness claiming attendance, 51, § 9.
Of witness in criminal case, 60, § 1.

AFFIDAVITS.
On motion for new trial, 52, § 14.

AFFIDAVIT IN ATTACHMENT.
Requisites of, 47, § 139.

AMENDMENTS.
See *Acts Amended.*

ANIMALS.
Having contagious disease, 89, § 1.
See *Live Stock.*

ANSWER.
General or specific, 46, § 56.
See *Civil Practice Act.*

HeinOnline -- 1874 199 1874

APPEAL.
Undertaking in, always necessary, 50, § 5.
On bill of exceptions, 63, § 16.
In case commissioners disallow accounts, 63, § 2.

APPLICATION.
For laying out or altering roads, 103, § 2.

APPORTIONMENT.
Of school moneys, 118, § 19, 122, § 28, 136, §§ 48, 50, 51.
See *Legislative Assembly.*

APPROPRIATION.
Act making, 39, §§ 1-3.
To Montana penitentiary, 39, § 1.
Warrants advertised and sold, 39, § 2.

ARSENAL.
Resolution, to pay for removing arms, 192.

ATTACHMENT.
On debt before due, 47, § 139.
Plea in abate of, 47, § 139.
Property taken, how released, 47, § 140.
Writs may be issued to different counties, 47, § 140.
Undertaking to release property, 48, § 155.
How discharged, 48, § 156.
Undertaking required before issuing writ of, 56, § 138.

ATTACHMENT BOOK.
How and where kept, 58, § 21.

ATTORNEY.
Power as to publication of legal notices, 99, § 1.

AUDITOR.
See *Territorial Auditor.*

AUDITING officer.
Not to be interested in claims audited, 66, § 4.

B

BASTARDS.
Act concerning, 40, §§ 1-7.
Complaint under act, 40, § 1.
Prosecution of putative father if mother fails to sue, 41, § 2.
When putative father bound over or committed, 42, § 3.
When bond renewed, 42, § 4.
Trial, when issue joined, 42, § 5.
Duty of court if verdict guilty, 42, § 6.

BEAVERHEAD county.
Member of council of, 37, § 3.
Member of house allowed, 38, § 5.
Portion of public domain attached to, 68, § 2.

BILL of exceptions.
See *Exceptions.*

BITTER ROOT Valley.
Memorial relating to opening to settlement, 183.

BLANKS.
Furnished county treasurer, 101, § 1.
County clerk to distribute to assessors, 141, § 4.
Pay of clerk for distributing, 141, § 5.

BOND.
In attachment, 56, § 138.
Of deputy district clerk, 75, § 1.
Of contractor for convict labor, 96, § 14.
Of road supervisor, 109, § 18.

BONDS.
County commissioners may set aside funds to pay, 70, § 1.
Treasurer to advertise when funds to pay, 70, § 1.

BOZEMAN, town of.
County commissioners may appoint fire warden in, 148, §§ 1-2.
Act to incorporate, 158, §§ 1-19.

BRANDS.
Of stock district, 88, § 7.
Illegal branding or defacing, 89, § 9.
Person selling stock to vent, 89, § 10.
See *Marks and Brands, Live Stock.*

C

CAPITAL law.
Act to locate seat of government, 43, §§ 1-10.
See *Seat of Government.*

CANVASS.
Of returns on capital law, 45, § 5.

CATTLE.
To be rounded up, 85, § 2.
See *Live Stock.*

CENSUS.
Taken under school law, 117, § 27.

CHALLENGE.
Of jury for cause, 52, § 12.

HeinOnline -- 1874 200 1874

CHILDREN.
When married woman responsible for maintenance of, 93, § 4.

CHOTEAU county.
Member of council of, 37, § 3.
Member of house, allowed, 38, § 5.

CIVIL practice act.
Amendments to, 46, §§ 1-2; 49, §§ 1-21.
Answer, what may be, 46, § 56.
Attachment on debt not due, 47, § 139.
Writ in attachment how directed, 47, § 140.
Property attached, how released, 48, § 155.
Attachment, how discharged, 48, § 156.
Deposition of non-resident witness, 49, § 1.
Same read as evidence, 50, § 2.
Same read by either party, 50, § 3.
Same how certified and returned, 50, § 4.
Undertaking necessary on appeal, 50, § 5.
Of motion for new trial, 50, § 6.
Limitation as to issuance of execution, 51, § 7.
Allowance of costs for witness, 51, § 8.
Witness to make affidavit of attendance, 51, § 9.
Fee bill after final judgment, 51, 2 10.
Account of costs to be itemized, 52, § 11.
Either party may have jury sworn as to competency, 52, § 12.
As to notice for new trial, 52, § 14.
Exceptions, how taken and signed, 53, § 15.
Same how settled when appeal taken, 53, § 16.
Fee of officer serving more than one process in same direction, 53, § 17.
Of costs on disposition of suit, 54, § 18.
Costs in probate court, how taxed, 54, § 19.
Of service and return of summons, 54, § 34.
Summons how executed, 54, § 36.
Service of same on corporation, 55, § 36.
Same on foreign corporation, 55, § 36.
Same on minor, 55, § 36.

CHILDREN—*Continued.*
Same on person of unsound mind, 55, § 36.
When jurisdiction deemed acquired, 55, § 45.
Pleadings, what allowed, 56, § 48.
Undertaking in attachment, 56, § 138.
Execution, when returnable, 57, § 253.
Sale of property under execution, 57, § 271.
Attachment book to be kept, 58, § 21.

CLAIMS.
Against small estates, when barred, 35, § 1.

CLERK of district court.
To make out fee bill, 51, § 10.
Pleadings filed with, 56, § 48.
To require undertaking in attachment, 56, § 138.
To attach execution to judgment roll, 57, § 253.
To report fines collected, 133, § 44.

CLERK of election.
See *Elections.*

CLERK of school district.
See *School Law.*

CLERK of stock board.
Duties of, 87, § 5.
See *Live Stock.*

COMPLAINT.
In bastardy case, 40, § 1.
Part of pleadings allowed, 56, 248.

COMPROMISE.
See *Joint Debtors.*

CONTRACT.
For convict labor, 95, § 1.

CONTRACTS.
For tolls annulled, 142, § 2.

CONVICTS.
Kept employed at hard labor, 95, § 14.

COPIES.
Of papers, how furnished, 55, § 36.

COPY.
Of writ when delivered to defendant, 55, § 36.

CO-PARTNERSHIP.
See *Joint Debtors.*

HeinOnline -- 1874 201 1874

CORPORATION.
How served with summons, 54, § 36.

COSTS.
Of number of witnesses taxed, 51, § 8.
Clerk to make bill of, 51, § 10.
On final disposition of suit, 54, § 18.
In probate court, follow judgment, 54, § 19.
In misdemeanor, without indictment, 65, § 1.
Enforcing mechanics' lien, 85, § 20.
In proceeding for right of way over mining ground, 94, § 1.

COUNCIL.
See *Legislative Assembly.*

COUNTIES and county boundaries.
Act concerning, 66, §§ 1-3.

COUNTIES and county officers.
Duty of commissioners as to county orders returned, 69, § 1.

COUNTY.
Divided into stock districts, 85, § 1.
Divided into road districts, 109, § 16.

COUNTY clerk.
To notify clerk of paupers county, when, 72, § 2.
Certificate of organization of stock board filed with, 87, § 6.
To notify supervisors of appointment or election, 109, § 17.
Duties of, under school law, 133, § 44; 135, § 47.

COUNTY commissioners.
May prosecute for bastardy, when, 40, § 2.
Act concerning duties of, 63 §§ 1-2.
Allowance of accounts by, 63, § 1.
Appeal in case of disallowance of accounts by, 63, § 2.
May transfer surplus in certain county funds, 64, § 1.
Powers as to fees, in misdemeanors, 65, § 1.
Allowance by, for dieting prisoners, 65, § 2.
Not to have interest on claim audited, 66, § 4.
Duty as to county orders returned, 69, § 1.
May set aside funds to pay bonds, 70, § 1.

COUNTY commissioners—*Continued.*
Have control of paupers, 72, §§ 7, 8.
Duty under law relating to live stock, 85, §§ 1-4.
To supply treasurer with blanks and postage, 101, § 1.
To enter on books taxes levied, 102, § 1.
Have supervision of roads, 103, § 1.
Petition to, for roads, 103, § 2.
To appoit viewers and surveyor, 104, § 4.
Duty on receiving viewers report, 105, § 5.
Duty when damages claimed, 105, § 7.
Power when damages assessed, 106, § 8.
Power to change location of roads, 107, § 11.
May establish private roads, 108, § 13.
To divide county into road districts, 109, § 16.
Appointment by, of supervisors, 109, § 17.
Power to remove supervisors, 109, § 18.
Power as to damages by supervisor and as to purchase of implements, 112, § 23.
Duties under school law, 121, §§ 15, 16.
Not to authorize toll collected on road or bridge, 142, § 1.

COUNTY orders.
Order of paying, 69, § 1.
When returned, examined, and canceled, 69, § 1.

COUNTY poor.
Act concerning, 71, §§ 1-5.
Duty of commissioners when pauper applies for relief, 71, § 1.
As to non-resident pauper, 72, § 2.
Penalty for bringing or leaving non-resident paupers, 73, § 3.

COUNTY recorder.
To keep "Attachment book," 58, § 21.
Duty when account filed under lien law, 84, § 7.

COUNTY superintendent.
See *Schools.*

COUNTY treasurer.
How shall pay county orders, 69, § 1.

HeinOnline -- 1874 202 1874

COUNTY treasurer—*Continued.*
To deliver vouchers to county board, 70, § 1.
To post notice when bonds payable, 71, § 1.
Duty to account and settle, 100, § 1.
To notify tax payers, 101, § 1.
To proceed against delinquent tax payer, 101, § 1.
Duty under school law, 117, § 7; 132, § 45; 135, § 47.

COURT, district.
Jurisdiction when acquired, 55, § 45.
Jurisdiction in misdemeanors, 59, § 6.

COURT, probate.
Costs in to follow judgment, 54, § 19.
Jurisdiction of, in misdemeanors, 59, § 6.
See *Probate Court.*

CRIMINAL case.
Fees of witnesses in, 60 § 1.

CRIMINAL laws.
Act to regulate proceedings in certain misdemeanors, 61, §§ 1, 2.
Jurisdiction not acquired when defendant accuses himself, 61, § 1.
Act to define certain offences, 61, §§ 1–3.
Penalty for illegal voting, when capital to be located, 61, § 2.
Penalty for making false returns, 62, § 2.

CRIMINAL practice act.
Act amending, 59, §§ 1–3.
Defining jurisdiction of courts in cases of misdemeanors, 59, § 1.
Act amending, 60, § 1.
Fees of witnesses in criminal cases, 60, § 1.

D

DAMAGES.
For right of way in development of mines, 94, § 13.
For opening road, 105, § 7.
For acts of supervisor, 112, § 23.

DEAF, mute and blind children.
Act concerning, 73.
Provision for educating, 73, § 1.
Pay for educating, 73, § 2.
Act to apply only to indigent children, 75, § 3.

DEBTOR.
See *Joint Debtor.*

DEER LODGE county.
Members of council allowed, 37, § 3.
Members of house allowed, 38, § 5.
Commissioners of to audit certain claims, 147, §§ 1–3.
Commissioners of may levy special for bridge purposes, 147, §§ 1–4.
Memorial, relating to prolection of citizens of, 184.

DEER LODGE town.
County commissioners may remove dead from cemetery, 136.
County commissioners may appoint fire wardens in, 136.
Act to support fire department of, 145.

DEFENDANT.
Answer of general or specific, 46, § 56.
Plea by to abate attachment, 47, § 139.
Where property of attached, 47, § 140.
Property of attached, how released, 48, § 155.
How may discharge attachment, 48, § 156.
Where and by whom served, 54, § 36.
When magistrate denied jurisdiction over, 61, § 1.
To pay costs of misdemeanor, 65, § 1.

DELINQUENT.
Tax payer, when deemed, 65, § 1.
Under road law, 114, § 27.

DEMURRER.
Part of pleadings allowed, 56, § 48.

DEPOSITION.
Of non-resident witness, how taken, 49, §§ 1–4.
May read in evidence, 50, § 2.
Either party may read, 50, § 3.
How certified and returned, 50, § 4.

DEPUTY district clerk.
How appointed, 75, § 1.
Oath and duties of, 76, § 2.

DIRECTORS of penitentiary.
To keep convicts employed, 95, § 1.

DISCHARGE.
Of joint debtor, how deemed payment, 81, § 3.

DISTURBING.
School or school meeting, 138, § 59.

HeinOnline -- 1874 203 1874

DISTRICT assessor.
To collect statistics, 139, § 1.
To return same to auditor, 141, § 4.
Penalty for neglecting, 141, § 6.

DISPUTES.
Of school matters, 138, § 49.

DISTRICT clerk of schools.
See *Schools.*

DISTRICT clerk.
May appoint deputy, 75, § 1.
Liable for acts of deputy, 75, § 1.
See *Clerk of District Court.*

DISTRICT court.
See *Court, District.*

DISTRICT officers.
Secretary of territory to canvass election of, when, 77, § 1.
See *Elections.*

E

EDUCATION.
Of deaf, mute and blind children, 73, §§ 1-4.

ELECTION.
Of members legislature, 37, § 4; 38, § 6.
On removing capital, 43, §§ 2-5.
When locating seat of government at issue, 61, § 1.
Of road supervisors, 109, § 17.

ELECTIONS.
To fill vacancy in legislature, 38, § 7.
Act concerning, 76-78.
Qualification of electors, 76, § 1.
For road supervisors, 109, § 17.
For school officers, 123, § 21.
For school purposes, 134, § 46.

ESTATES.
Small, of deceased persons how settled, 35, § 1-6.
See *Administrators* and *Executors.*

ESTRAYS.
Belonging or found in district, branded, 85, § 7.
What deemed, 88, § 8.
See *Live Stock.*

EVIDENCE.
Of non-resident, how taken, 49, § 1.
Depositions read in, 50, § 2.
In bastardy cases, 42, § 5.
Of release of joint debtor, 81, § 2.

EXCEPTIONS.
To opinion or decision of district court, 53, § 14.
How taken and signed, 53, § 15.
How settled, on motion for new trial, 53, § 16.

EXECUTION.
How issued on judgment of five years standing, 50, § 7.
When returnable, 57, § 253.
How property sold under, 57, § 271.

EXECUTION BOOK.
How indexed and kept, 57, § 253.

F

FATHER.
Of bastard prosecuted, 40, §§ 1, 2.
If guilty to maintain bastard, 43, § 6.

FEE BILL.
Clerk to make out, 51, § 10.

FEES.
Number of witnesses, allowed, 51, § 8.
Itemized account of made, 52, § 11.
Of witnesses in criminal case, 60, § 422.
In misdemeanor, how allowed, 65, § 1.
For dieting prisoners, 65, § 2.
Of probate judge, 65, § 3.
For legal advertisements, 79, § 1.
Of territorial treasurer, 79. § 1.
Of territorial auditor, 80, § 2.
Of county recorder under lien law, 84, § 7.
For recording marks and brands, 92, § 5.

FINES.
For illegal voting, 61, § 1.
For bringing and leaving pauper, 73, § 3.
For venting district brand without authority, 88, § 7.
For illegal branding or defacing brand, 89, § 9.
For not removing diseased animals, 89, § 11.
For using brand of another after recorded, 91, § 3.
For used marked article, for deception, 91, § 4.
How appropriated under law of "Marks and Brands," 92, § 8.
Of road viewers for neglect of duty, 107, § 12.
Collected, how reported, 133, § 44.

HeinOnline -- 1874 204 1874

FISCAL YEAR.
County treasurer to report and settle at close of, 100, § 1.

FRANCHISE.
Of road or bridge when forfeited, 143, § 5.

FRAUDULENT RETURNS.
Penalty for receiving, 62, § 2.

G

GALLATIN COUNTY.
Member of Council allowed, 37, § 3.
Members of House allowed, 38, § 5.
Northern boundary of, defined, 67, § 2.
Commissioners of, may appoint fire warden for Bozeman, 148.

GOVERNMENT.
Act to locate seat of, 43.

GOVERNOR.
To make proclamation if capital law approved, 44, § 3.
To remove archives, when, 45, § 6.
To contract for education of deaf, mute and blind children, 74, § 1.
May contract for keeping insane, 80, § 1.

GUARDIAN
Of minor or insane, how summoned, 55, § 36.

H

HELENA, town of.
Seat of government removed to, 43, § 1.
Fire limits may be established in, 149.
Act to support fire department of, 153.
Act relating to fire tax in, 155.

HIGHWAYS.
Toll roads not chartered declared public, 142, § 2.
See *Roads and Highways.*

HISTORICAL SOCIETY.
Resolution appropriating money for 189.

HOUSE OF REPRESENTATIVES.
See *Legislative Assembly.*

HUSBAND.
Not liable for debts of wife trading sole, 94, § 6.

I

INFANT.
How summoned, 54, § 36.

INSANE.
Act concerning, 80.
Governor may contract for keeping, 80, § 1.
Auditor to issue warrant to pay for keeping, 80, § 2.

INSANE PERSON.
How summoned, 53, § 36.

INTEREST.
Of unknown parties in action, 55, § 45.
Rebated in attachment when debt not due, 47, § 139.
Auditing officer not to hold, on claim audited, 66, § 4.
Sinking fund to pay, 70, § 1.

INTERROGATORIES.
See *Depositions, Evidence.*

IRRIGATION.
Memorial relating to, 174.

ISSUE.
When joined in bastardy case, trial by jury, 42, § 5.

J

JAIL.
When father of bastard committed to, 43, § 6.

JEFFERSON county.
Member of Council of, 37, § 3.
Members of House allowed, 38, § 5.

JOINT debtors.
Act concerning, 81.
May be released by compromise, 81, § 1.
Evidence of release, 81, § 2.
Rights of party released, 82, § 3.
Member released to pay share of firm debt, 82, § 4.
To whom act applies, 82, § 5.
Limitation of provisions of act, 82, § 6.
As to judgment against principal and sureties, 83, § 6.

JOINT memorials.
In relation to Yellowstone national park, 172.
In relation to public domain, 177.
In relation to lands in Bitter Root valley, 181.

HeinOnline -- 1874 205 1874

JOINT memorials—*Continued.*
In relation to protection of Yellowstone valley, 182.
In relation to opening lands on Bitter Root valley to settlement, 183.
In relation to protection of citizens of Deer Lodge and Missoula counties, 184.
In relation to improvement of Yellowstone river, 186.

JOINT resolutions.
As to introduction of bills, 188.
Concerning distrubution of laws, 188.
In relation to Centennial exhibition, 189.
In relation to Historical Society of Montana, 189.
To pay for *Daily Herald*, 190.
To pay J. M. Knight for services, 190.
In relation to publication of reports of officers of the penitentiary, 190.
To pay for repairing arsenal, 191.
To pay Thomas Devarmon for newspapers, etc., 192.
To compensate L. M. Todd, 192.
To pay G. F. Cope for newspapers, etc., 192.

JUDGE.
Duty of, as to bill of exceptions, 53, § 15.
Minutes of, on motion for new trial, 53, § 15.
Power of, as to unknown parties in interest, 55, § 45.

JUDGES of election,
See *Elections.*

JUDGMENT.
In attachment, when debt not due, 47, § 139.
Execution, not to issue after five years, exception, 51, § 7.
Against joint debtors, 83, § 8.

JUDGMENT roll.
See *Execution.*

JURISDICTION.
When court acquires in civil case, 55, § 45.
Of the several courts in criminal cases, 59, § 6.
Magistrate, not to acquire over self-accuser, 61, § 1.

JURY.
Allowed in bastardy case, 42, § 5.
Either party may have sworn, or voir dire, 52, § 12.

JUSTICE of the peace.
Jurisdiction of, in misdemeanor, 59, § 6.
Not to acquire jurisdiction over self-accuser, 61, § 1.
To report fines collected, 133, § 44.

K

KEEPING insane.
Governor may contract for, 80, § 1.
Payment for, 80, § 2.

L

LABOR.
Of convicts, 95, § 1.
See *Penitentiary.*

LANGUAGE.
Schools taught in the English, 128, § 32.

LAWS.
Resolution concerning distribution of, 188.

LEGAL advertisements.
Rates of, established, 79, § 1.

LEGAL notices.
Act to regulate publication of, 99, § 1.

LEGISLATIVE assembly.
Regular Sessions of, 36, § 1.
Number of members, 37, § 2.
Apportionment of members council, 37, § 3.
Election of council, 37, § 4.
Apportionment, members of house, 38, § 5.
Election, members of house, 38, § 6.
Elections to fill vacancies, 38, § 7.

LEVY of taxes.
See *Taxes.*

LEWIS and Clark county.
Members of council allowed, 37, § 3.
Members of house allowed, 38, § 5.
County commissioners, may establish fire limits in Helena, 149.
Act to provide for funding debt of, 152.

LICENSE.
Act concerning repealed, 83, § 1.

LIENS.
See *Mechanic's Liens.*

HeinOnline -- 1874 206 1874

LIMITATION.
Of time, when execution may issue, 51, § 7.
Of suit to enforce mechanic's lien, 85, § 20.

LIVE stock.
Act concerning, 85.
Divisions of counties into districts, 85, § 1.
Cattle, rounded up, 85, § 3.
Unclaimed stock, 86, § 3.
Election of stock board, 86, § 4.
Organization of board, 87, § 5.
Evidence of organization, 87, § 6.
District estray, brand, 88, § 7.
Branding and disposal of estrays, 88, § 8.
Penalty for illegal branding, 89, § 9.
Brand rented, when stock sold, 89, § 10.
As to animals with contagious disease, 89, § 11.

M

MADISON county.
Member of council allowed, 37, § 3.
Members of house allowed, 38, § 5.
Portion of public domain attached to, 68, § 1.

MAGISTRATE.
Not to acquire jurisdiction when defendant accuses self, 61, § 1.

MAINTENANCE.
Of children by married women, 93, § 4.

MARKS and brands.
Act concerning, 90.
Use of mark or brand, 90, § 1.
Same to be recorded 91, § 2.
Penalty for using recorded brand, 91, § 3.
Penalty for using illegally, 92, § 4.
Fee for recording, 92, § 5.
Power of courts of equity, 92, § 6.
Time in which to file, 92, § 7.
Fines under act, 92, § 8.

MARRIED women.
Act concerning as sole traders, 93.
Right of, to carry on business, 93, § 1.
Notice of intention, 93, § 2.
Rights and liabilities, 93, § 3.
Liable for maintenace of children, 93, § 4.
Limitation as to business, 94, § 5.
Husband not liable for debts of, 94, § 6.

MEAGHER county.
Members of council of, 37, § 3.
Members of house allowed, 38, § 5.
Boundaries of established, 66, § 1.

MECHANICS liens.
Act in relation to, 84.
Account of labor and material filed, 84, § 1.
Duty of recorder when account filed, 84, § 2.
When suit to be commenced, 85, § 20.

MILEAGE.
Not allowed county treasurer, 108, § 1.

MEMBER of legislature.
See *Legislative Assembly.*

MEMORIALS.
See *Joint Memorials.*

MINES.
Act concerning right of way, 94.
See *Placer Mines.*

MINOR.
How served with summons, 55, § 36

MISDEMEANORS.
Jurisdiction of the several courts as to, 59, § 1.
Magistrates not to acquire jurisdiction when defendant is a self accuser, 61, § 1.
Defendant to pay costs, 65, § 1.

MISSOULA county.
Act amending act, authorizing county commissioners to levy special tax for bridge purposes, 155.
Memorial relating to protection of citizens of, 184.

MOTHER.
Of bastard, competent witness, 42, § 5.

MOTION.
For new trial, 52, § 14.
Exceptions, how taken and signed, 53, § 15.
Appeal from, how tried, 53, § 16.

N

NEWSPAPER.
Rates for legal advertisements in, 79, § 1.
Act concerning publication of legal notices in, 99, §§ 1, 2.

HeinOnline -- 1874 207 1874

NEW trial.
On motion for proceedings may be stayed, 51, § 6.
Motion for, requisites, 52, § 14.
Appeal from decision, on motion for, 53, § 16.

NON-resident.
Testimony of, how taken, 49, § 1, 4.
Corporation, how served, 54, § 36.

NOTICE.
Of motion for new trial, 52, § 14.
Of property under execution, 57, § 271.
Of appeal from county commissioners, disallowing account, 63, § 2.
Posted, of bonds, when money to pay, 71, § 1.
Of round-up, of stock, 86, § 3.
Of school meeting, 123, § 21.

O

OATH.
Of deputy district clerk, 76, § 2.
Of election officers, how administered, 78, § 1.
Of road viewers, 105, § 6.
Of road supervisors, 109, § 18.
Of school officers, 137, § 53.

OBSTRUCTION of roads.
See *Roads and Highways.*

OFFICER.
Serving more than one process in same direction, 53, § 17.
Auditing claim, not hold interest, 66, § 4.

ORDER.
Staying executions, on motion for new trial, 50, § 6.

ORDERS.
See *County Orders.*

P

PARTY.
Either may have jury sworn as to competency, 52, § 12.
Unknown, how brought into court, 55, § 45.

PARTNERS.
See *Joint Debtors.*

PAUPERS.
See *County Poor.*

PAYMENT.
Of county orders, 68, § 1.
Of interest and bonds, 70, § 1.

PENALTY.
For bringing and leaving pauper, 73, § 3.
For illegal branding, 89, § 9.
For not venting brand, when 89, § 10.
For not removing diseased stock, 89, § 11.
For not paying taxes when due
For refusing to surrender or obstructing public roads, 142, § 4.
See *Fines.*

PENITENTIARY.
Appropriation for, 39, § 1.
Act to regulate and govern, 95.
Directions to hire out convicts to labor, 95, § 1.
Pay for labor and report of warden, 96, § 2.

PERISHABLE property.
How advertised and sold, 57, § 271.
See *Execution.*

PERSONAL property.
How advertised and sold, 57, § 271.

PETITION.
For laying roads, 103, § 2.
See *Roads and Highways.*

PLACER mines.
Act to provide, forfeiture of held by aliens, repealed, 97.

PLAINTIFF.
Pleadings on part of, 56, § 48.
To give undertaking in attachment, 56, § 138.
Plea of abatement, in attachment, 47, § 139.

PLEADINGS.
What allowed, 56, § 48.

POLL books.
See *Elections.*

POOR.
See *County Poor.*

PRINCIPAL.
See *Joint Debtors.*

PRINTING.
Under school law, 138, § 61.
Resolutions concerning, 191, 192.

PRISONERS.
Allowance for dieting, 65, § 2.

PRIVATE ways.
See *Roads and Highways.*

PROBATE clerk.
Appointed by probate judge, 98, § 1.

HeinOnline -- 1874 208 1874

PROBATE court.
Act providing for holding terms of, 97, ¿¿ 1, 2.
See *Court Probate.*

PROBATE judge.
Power in settling small estates, 35, §¿ 1, 4.
Duty of pay over moneys, 36, ¿ 3.
Fees of established, 65, ¿ 3.
May appoint probate clerk, 98, ¿ 1.
To report fines collected, 133, ¿ 44.

PROCEEDINGS.
Right of way, for development of mines, 94, ¿¿ 1, 3.

PUBLICATION.
Of legal notices, 91, ¿ 1.

PUBLIC domain.
Portions of, attached to Madison and Beaver Head counties, 68, ¿¿ 1, 2.
Memorial relating to, 177.

PUPILS.
See *Schools.*

R

RATES of legal publications.
Fees for legal advertisements, 79, ¿ 1.
Party may designate newspaper, 99, ¿ 1.

REAL estate.
How sold under execution, 57, ¿ 271.

REBATEMENT.
Of interest in attachment 47, ¿ 139.

RECORD.
Entry of exceptions on, 53, ¿ 15.
Of attachments, 58, ¿ 21.
County orders compared with, 69; ¿ 1.
Made of taxes levied, 102, ¿ 1.

RECORDER.
See *County Recorder*, marks and brands.

RELEASE.
Of joint debtor, 81, ¿ 1.
Evidence of, 81, § 2.
See *Joint Debtors.*

REPEAL.
Relating to appointment of members of legislature, 38, ¿ 8.
Relating to removal of capital, 46, ¿ 9.

REPEAL—*Continued.*
Relating to county commissioners, 64, ¿ 2.
Relating to county officers—revenue, 71, ¿ 2.
Relating to county poor, 73, § 4.
Relating to elections, 77, ¿ 2.
In relation to fees, 79, ¿ 2.
Relating to salary of auditor and treasurer, 80, ¿ 3.
Sec. 25 relating to licenses, 83, ¿ 1.
In relation to marks and brands, 92, ¿ 9.
Relating to married women, as sole traders, 94, ¿ 7.
Concerning mines; right of way, 95, ¿ 2.
Sec. 14, relating to penitentiary, 96, ¿ 3.
Relating to placer mines held by aliens, 97, ¿ 1.
Sec. 3, relating to probate clerks, 98, ¿ 2.
Relating to publication of legal notices, 99, ¿ 2.
Relating to revenue, 100, ¿ 2: 103, ¿ 2.
Acts relating to roads and highways, 115, ¿ 32.
Acts relating to schools, 138, ¿ 63.
Relating to statistics, 141, ¿ 7.
Relating to redemption of funded debt of Lewis and Clark county, 153, ¿ 6.
Act authorizing commissioners of Missoula county to levy taxes for bridge purposes, 156, ¿ 4.
Relating to charter of Virginia, 157, ¿ 2.
See *Acts Amended.*

REPLICATION.
Part of pleadings, 56, ¿ 48.

REPORT.
Of county commissioners to territorial treasurer, 100, ¿ 1.
Of road viewers, 104, § 5.
Of road supervisors, 113, ¿ 26.

REPRESENTATIVE districts.
See *Legislative Assembly.*

RESIDENCE.
Defined as affecting paupers, 72, ¿ 7.

RESOLUTIONS.
See *Joint Resolutions.*

RETURN.
Of summons, 54, ¿ 34.
Of county orders paid, 69, ¿ 1.

HeinOnline -- 1874 209 1874

REVENUE.
County commissioners may set aside funds to pay bonds, 70, § 1.
Acts concerning, 100-102.

RIGHT of way.
Act concerning, for development of mines, 94.
As to costs of proceeding under Act, 94, § 1.

ROADS and highways.
Act in relation to, 103.
Under supervision of county commissioners, 103, § 1.
Application for laying out, 103, § 2.
Notice of application, 103, § 3.
Appointment of viewers and surveyors, 104, § 4.
Duties of viewers and surveyors, 104, § 5.
Oath of viewers, 105, § 6.
Proceeding when damages claimed, 105, § 7.
Payment of damages, 106, § 8.
Appeal from assessment of damages, 106, § 9.
Width of roads, 106, § 10.
Changing location of, 107, § 11.
Fine of viewers for neglect of duty, 107, § 12.
Private ways and roads, 108, § 13.
Gates on private ways, 108, § 14.
Report of viewers, as to private ways, 108, § 15.
County divided into districts, 109, § 16.
Supervisors appointed or elected 159, § 17.
Term of office, oath and bond of supervisor, 109, § 18.
Road tax and labor, 110, § 19.
Notice to work and delinquent, taxes, 111, § 20.
Of labor and tools, 111, § 21.
Supervisor to open and keep in repair, 112, § 22.
Power of supervisor as to ditches and damages, for acts of, 112, § 23.
Removing obstructions and repairing bridges, 113, § 24.
Credit for extra labor, 113, § 25.
Compensation and reports of supervisors 113, § 26.
Action against delinquents, 114, § 27.
Supervisor fined for misfeasance or malfeasance, 114, § 28.
Pay of supervisor, 114, § 29.
Distance of roads apart, 114, § 30.
Guide boards, 115, § 31.

ROADS and highways—*Continued.*
Conflicting act repealed, 115, § 32.
Not chartered declared public, 142, § 3.

ROAD tax.
Levy and collecting of, 110, § 19.
Collection of delinquent, 111, § 20.
No property exempt from, 114, § 27.
See *Roads and Highways.*

ROUND up.
See *Live Stock.*

S

SALARY.
Of territorial treasurer, 79, § 1.
Of territorial auditor, 80, § 2.
Of superintendent of public instruction, 117, § 4.

SALE.
Of property of small estates, 35, § 2.
Of property under execution, 55, § 45.
Of estrays, 88, § 8.
Of stock, brand vented, 89, § 10.

SCHOOL fund.
Same used only for school purposes, 64, § 1.

SCHOOLS.
Act to provide for a system of common schools, 115.
Superintendent of public instruction, appointment, bond, oath and powers, 115, § 1.
General duties of, 116, §§ 2, 3.
Office, where kept, salary, 117, § 4,
Expenses of office, 117, § 5.
To deliver property to successor, 117, § 6.
Schools—County treasurer, duties of under act, 117, § 7.
Schools—County Superintendent, election, term of office, 118, § 8.
Oath and bond, 118, § 8.
Shall apportion school moneys, 118, § 9.
General powers and duties of, 119, § 10
Failing to make reports—penalty, 120, § 11.
To administer oaths, pertaining to office, 120, § 12.
Officers appointed by, 120, § 13.
Boundaries of districts, 121, § 14.
Salary and expenses of, 121, § 15.
Organization of new, and changing old districts, 121, § 16.

HeinOnline -- 1874 210 1874

SCHOOLS—*Continued.*
When new districts entitled to moneys, 122, § 17.
Formation of new districts by division of old, 122, § 18.
Report of clerk when district lying in more than one county, 123, § 19
Control of school property, 123, § 20.
School elections and trustees of school elections, 123, § 21.
Term of office of trustees, 125, § 22.
Organization of new district, 125, § 23.
House in which election is held, 125, § 24.
General duties of district clerk, 126, § 25.
Duties and powers of trustees, 126, § 26.
Census of schools and report, 127, § 27.
Of supplies and expenses, 128, § 28.
Liability of trustees, 128, § 29.
Children from adjoining districts, 128, § 30.

OF SCHOOLS.
Admission of children, 128, § 31.
Instruction in, 128, § 32.
Education of African children, 129, § 33.
Sectarian or partizan books not used, 129, § 34.
Length of school day, 129, § 35.
Regulations as to pupils, 130, § 36.

TEACHERS.
Reports made by, 130, § 37.
General duties of, 131, § 38.
School month construed, 131, § 29.
Power of teacher over pupil, 132, § 40.
Mode of instruction by, 132, § 41.

SCHOOL revenue.
Proceeds of school lands, 132, § 42.
Tax, how levied and collected, 132, § 43.
Fines for support of schools, 132, § 43.
Report of fines collected, 133, § 44.
High schools may be established, 134, § 45.

DISTRICT taxes.
Same, how made, 234, § 46.
County treasurer to collect, 135, § 47.
Apportionment of, 136, § 48.
Same, how used, 136, § 49.

DISTRICT taxes—*Continued.*
District not entitled to, when, 136, §§ 50, 51.
Duty of officer, retiring, 137, § 52.
Oath of school officer, 137, § 53.
Officer not to be interested in contract, 137, § 54.
Fines under act, 137, § 55.
Penalty for abusing teacher, 137, § 56.
Disturbing school meeting, 138, § 57.
Penalty, if district clerk fail to take census, 138, § 58.
Settlement of school disputes, 138, § 59.
School year defined, 138, § 60.
Printing and binding under act, 138, § 61.
Title of act, 138, § 62.

SEAT of government.
Act removing, 43.
Penalty for illegal voting when question at issue, 61, § 1.
Penalty for receiving or certifying to false returns, 62, § 2.

SECRETARY of territory.
To canvass election returns of district officers, 77, § 1.

SECURITY.
Defendant in attachment may give, 47, § 140.

SET off.
In suit against joint debtors, 82, § 3.

SETTLEMENT.
When county treasurer to make, 100, § 1.

SHERIFF.
Writ of attachment directed to, 47, § 140.
When may release attached property, 48, § 155.
To collect fee bill, 51, § 10.
Serving more than one process in same direction, 53, § 17.
Service and return of summons by, 54, § 34.
Duty, in selling property, 57, § 271.
Duty, under election law, 78, § 1.

SINKING fund.
Moneys appropriated from, 39, § 1.
To pay interest and bonds, 71, § 1.

SOLE traders.
Married women as such, 93, §§ 1, 8.

HeinOnline -- 1874 211 1874

SPECIAL laws.
Act to authorize removal of dead from cemetery at Deer Lodge, 144.
Act to authorize county commissioners of Deer Lodge county to appoint fire warden for Deer Lodge town, 144.
Act to provide for support of Deer Lodge fire department, 145.
Act to authorize commissioners of Deer Lodge county to admit certain claims, 147.
Act to authorize commissioners of Deer Lodge county to levy special tax for bridge purposes, 147.
Act to authorize commissioners of Gallatin county to appoint a fire warden in town of Bozeman, 148.
Act to authorize commissioners of Lewis and Clarke county to establish fire limits in town of Helena, 149.
Act to provide for redemption of funded debt of Lewis and Clark county, 152.
Act to provide for support of Helena fire department, 153.
Act in relation to fire tax in town of Helena, 155.
Act to amend act to authorize commissioners of Missoula county to levy special tax for bridge purposes, 155.
Act to amend an act to incorporate the city of Virginia, 157.
Act to incorporate the town of Bozeman, 158.

STATISTICS.
Act to provide for collection of, 139.
Auditor to compile and report, 139, § 1.
Officers to assist auditor, 139, § 2.
Assessors to collect, 139, § 3.
Returns of, and blanks, 141, § 4.
Pay of officers for collecting, 141, § 5.
Penalty for neglecting, 141. § 6.

STOCK.
See *Live Stock.*

SUMMONS.
By whom and how served and returned, 54, § 34.
How executed, 54, § 36.
Of unknown parties, 56, § 45.

SUPERINTENDENT of public instruction.
To contract for education of deaf mute and blind children, 74, § 1.
See *Schools.*

SUPERINTENDENT of stock board.
See *Live Stock.*

SUPERVISOR of roads.
How appointed or elected, 109, § 17.
Term of office, oath and bond, 109, § 18.
To give notice for road labor and collect delinquent taxes, 111, § 20.
Power to order out teams, etc., 111, § 21.
To open and repair roads, 112, § 22.
Power to open drain ditches, 112, § 23.
To remove obstructions, etc., 113, § 24.
Certificate by, of extra labor, 113, § 25.
Compensation and reports of, 113, § 26.
Action by, for delinquent taxes, 114, § 27.
Fined for neglect and malfeasance, 114, § 28.
To erect guide boards, 115, § 31.

SURETIES.
See *Joint Debtors.*

SURPLUS moneys.
Act to transfer to different fund, 64.

SURVEYOR.
Appointment to survey road, 104, § 4.
Duty of surveying road, 104, § 5.
Compensation for surveying road, 114, § 29.

T

TAX.
Levied annually, 102, § 1.
For road purposes, 110, § 19.
Levied for school purposes, 132, § 43.
See *Taxes.*

TAX-bill.
Clerk to make out, 51, § 10.

TAXES.
When due and where paid, 101, § 1.

TAX payers.
County treasurer to notify, 101, § 1.

TEACHER.
See *Schools.*

TELEGRAPH lines.
Act concerning of, repealed, 83, § 1.

TERMS.
Of holding probate court, 97, § 1.

HeinOnline -- 1874 212 1874

TERRITORIAL auditor.
Issues warrants to pay expenses of penitentiary, 39, § 1.
Act defining duties of, 39.
To publish annual report, 39, ¿ 1.
Reports of, how printed, 40, ¿ 2.
To issue warrants to pay for educating deaf, dumb, and blind, 74, § 1.
Salary of auditor paid, 79, ¿ 1.
To issue warrants for keeping insane, 80, ¿ 2.
Duty to compile statistics, 139, ¿ 1.
To have statistical blanks printed, 141, ¿ 4.
To issue warrants under statistics law, 141, ¿ 5.

TERRITORIAL Supt. of public instruction.
Appointment, bond, oath, and powers of, 115, ¿ 1.
General duties of, 116, ¿¿ 2, 3.
Office of, where kept, salary, 117, ¿ 4.
Expenses of office, 117, ¿ 5.
To deliver property to successor, 117, ¿ 6.

TERRITORIAL treasurer.
Salary of, and how paid, 79, ¿ 1.
County treasurer to account and pay moneys to, 100, ¿ 1.

TESTIMONY.
Of non-resident, how taken, 49, ¿¿ 1, 4.
See *Depositions.*

TIMBER roads.
See *Roads and Highways.*

TOLL roads and bridges.
Act in relation to, 142.
County commissioners not to authorize toll collected, 142, ¿ 1.
Contracts for toll, annulled, 142, ¿ 2.
Road not chartered, declared public, 142, ¿ 3.
Penalty for refusing to surrender road or obstructing, 142, ¿ 4.
When toll road or bridge forfeited, 143, § 5.

TOOLS.
For working roads, 112, ¿ 23.

TREASURER.
See *Territorial Treasurer, County Treasurer.*

TRIAL.
Of putative father, in bastardy case, 42, ¿ 5.
Magistrate not to try, when defendant accuses self, 61, ¿ 1.

TRUSTEES of schools.
See *Schools.*

U

UNDERTAKING.
In suit of attachment, 47, ¿ 140.
To release property attached, 47, ¿ 140; 48, ¿ 155.
Necessary in all appeals, 50, ¿ 5.
Requisite of, in attachment, 56, ¿ 138.

UNKNOWN party.
How summoned, 56, ¿ 45.

UNSOUND mind.
Person of, how summoned, 54, ¿ 36.

V

VACANCY.
Of member legislature, how filled, 38, § 7.

VENT.
When stock sold, brand to be vented, 89, ¿ 10.
See *Live Stock.*

VIEWERS of roads.
To lay out or alter roads, 104, ¿ 4.
As to duties and reports of, 104, ¿ 5.
Oath of, 105, ¿ 6.

VIRGINIA, city of.
Capital removed from, 43, ¿ 1.
Act amending charter of, 157.

VOTER.
See *Capital Law, Elections.*

W

WARDEN of penitentiary.
Duty as to proceeds convict labor, 96, ¿ 2.

WARRANTS, territorial.
For expenses of penitentiary, 39, ¿ 1.
Restriction as to selling, 39, ¿ 2.
To pay for education of deaf, dumb, blind, 74, ¿ 2.
For keeping insane, 80, ¿ 2.

HeinOnline -- 1874 213 1874

WITNESS.
On trial, in bastardy case, 42, § 5.
When non-resident, deposition taken, 49, §§ 1, 4.
WITNESSES in civil action.
Allowance of costs for, limited, 51, § 8.
To make affidavit of attendance, 51, § 9.
WITNESSES in criminal action.
Bill for fees filed with clerk, 60, § 422.
WRIT.
Issued to different counties in attachment, 47, § 140.
WRIT—*Continued.*
Undertaking, before issuing in attachment, 56, § 138.

Y

YEAR.
Under school law defined, 138, § 60.
YELLOW STONE National park.
Memorial relating to, 172.
YELLOW STONE VALLEY.
Memorial relating to, 182.

HeinOnline -- 1874 214 1874